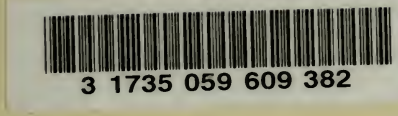
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THE

LAND-HOLDER'S ASSISTANT,

AND

LAND-OFFICE GUIDE;

BALTIMORE-STREET.
1808.

THE

LAND-HOLDER'S ASSISTANT,

AND

LAND-OFFICE GUIDE;

BEING

AN EXPOSITION OF ORIGINAL TITLES,

AS DERIVED FROM THE PROPRIETARY GOVERNMENT, AND MORE RECENTLY FROM THE STATE, OF MARYLAND: DESIGNED TO EXPLAIN THE MANNER IN WHICH SUCH TITLES HAVE BEEN, AND MAY BE, ACQUIRED AND COMPLETED.

CONTAINING

A brief Historical account of the grant and settlement of the province of Maryland; with an explanation of the Tenure by which it was held by the Proprietary, and those under which his grants were made to the settlers.

The several Conditions of Plantation; the Laws, Proclamations, Instructions, and Orders, relative to the establishment and regulation of the Land-Office, and examples of the various proceedings therein, prior to the revolution; intermixed with occasional sketches of the provincial history, comprehending disputes of territory with the adjoining provinces;—the revenue system of the Proprietary, and other subjects connected with

LAND AFFAIRS.

The actual rules of the Land Office, as founded on established usage, and on laws and regulations now in force: shewn in an analysis of the Acts of Assembly on that subject, under distinct heads; Instructions to Officers, and a collection of Decisions on Caveat and on Appeal, with comments on the principles resulting therefrom: Testimonies concerning the practice &c. &c.

THE WHOLE COMPRISING, AT FULL,

THE HISTORY AND PRACTICE OF THE LAND-OFFICE.

With an Appendix, containing the ancient LAND LAWS (so called) and some Acts relative to the making Conveyances.

BY JOHN KILTY,

Register of the Land-office for the Western-Shore of the State of Maryland.

BALTIMORE;

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1803.

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PREFACE.

I HAVE undertaken, in the ensuing enquiries, the developement of a system of great and general interest, but which many circumstances have combined to render intricate and obscure. This examination consists in several detached sketches of those parts of the early political history of Maryland which have relation with the establishment and the progressive operations of the LAND-OFFICE; in the exhibition of original documents relative to the same subject, and in a selection of examples of the various modes and forms of proceeding in land affairs; accompanied by such recitals, illustrations, and remarks, as have appeared the best calculated to convey a kind of knowledge very rare among the citizens of Maryland. That I have executed this task in the best manner that my talents and opportunities would permit will, I presume, be readily believed; for, in a production admitting so little of embellishment, I must necessarily have depended for any degree of approbation and success upon its real utility. I have known, as well from the nature of this work as from the countenance which they have given to it by anticipation, that it is to undergo the scrutiny of professional gentlemen, capable of detecting errors in statement or in reasoning. I have also been persuaded that it would attract the notice of an enlightened legislature, or, at least, of individuals of that legislature, and other public functionaries, more or less acquainted with the subject of which I have been treating; and I have believed that it would not fail to engage the perusal of that respectable description of citizens for whose use it is professedly designed. From the testimony and suffrage of such readers, and not from any pretensions of my own, I have been aware that the book must take its character, and stand or fall in the public estimation. Although, therefore, the kindness of a large and respectable list of subscribers may have secured me from absolute loss, it is certain that my prospect of recompense for the time and labour devoted to this arduous enquiry must depend on the degree of sanction and approbation that my work may receive from those who are the best qualified to determine on its merit. In regard to applause, independent of its effect in the point of interest, my expectations are limited to the credit of having applied myself with diligence to the study of those matters which appertain to the office I was called to administer; a pursuit which certainly tends to the advantage and reputation of the government in which that office holds its place: but this hope, though humble, has had its effect, in prompting me to the utmost exertion of my capacity to shew that I had not merely skimmed the surface of the land-office system, but had dived to its origin and elements, in order to rescue from oblivion a species of knowledge which has hitherto, so far as it was not already buried in records out of use, and not likely to tempt inspection, been dependent on the lives and memories of two or three individuals. I have, then, in a word, done my best to render this compilation worthy of the public expectation, and patronage; and, if I have failed, it is not for want of effort, but of ability.

But, that I may not seem to rest too confidently upon the merit of this performance, without admitting its imperfections and claiming allowance for the novelty and difficulty of the undertaking, I must be indulged in a more particular account of the inducements that led to it, and of the impediments which have been experienced in bringing the work to its present form: and, here, I must repeat, what was stated in my prospec-

tus, that the project was originally not my own. I had, indeed, been accustomed to hear of the obscurity of the rules of the land office: I had heard that the late chancellor, Mr. Hanson, had been solicited to prepare a publication on this subject: Upon being appointed to the land office, I was naturally led to enquire for some written directions applicable to the cases that came before me, and was then informed that there was no collection of rules or precedents in the office, but that the business was regulated by laws and established usages, and was to be learned by reading and practice. On my making a visit to Baltimore a few days after my appointment, this design was suggested to me by an experienced member of the bar, who told me that such a publication had *long been required*; that it was *left for me*, and that I *must undertake it*. On my return, I found other gentlemen prepared to offer the same thing to my consideration. I was startled at the difficulty of such an undertaking; but, considering that the thing was to be done at leisure, that it was not becoming or reputable for me to learn the business of my office by rote, without knowing the foundation and reason of the matters to be transacted, and that there was no way to avoid this but by searching into the origin of the system, and tracing things from their causes and beginnings, I resolved, at least, to enter upon such a research, and to be regulated, as to the rest, by the degree of success which might attend this first design. In a few months I became satisfied of the practicability of combining with my own instruction the plan which had been suggested to me, and began to make extracts of what I observed in the records. I communicated my intention to the chancellor, who confirmed what had been said relative to himself, and seemed to regret that circumstances had not permitted him to execute the design, but chearfully promised me all the assistance in his power. The work had not advanced, at the time of his death, to that point at which I had proposed to submit it to his inspection. This is the history of the present undertaking; and, if it does not exempt me from the charge of a considerable degree of confidence, in beginning to write upon a subject which I did not then thoroughly understand, (if I may be said now to understand it) it will at least shew that this confidence was excited by others, and pushed into action by laudable considerations; in fine, that I have not unasked obtruded myself upon the public.

In regard to the difficulties that have attended this undertaking, and which have so long protracted its accomplishment, I have to observe that, when my design was announced to the public, I was but little aware of the extent of the enquiry which it involved. I had collected all the matter to be found in the records of the land office, and there, with exception of a few documents in the office of the late general court, I had supposed that my research was to end. After having actually begun to prepare my compilation for the press, I was led by accident to inspect the records of the council room, and soon found that it was principally from them that the history of the provincial land office was to be collected. The book from which the erection of the land council, and many other important matters relative to the ancient practice, have been obtained was found lying, as an article of mere lumber, in the chancery office. I examined these records page by page, and spent several months in extracting and digesting the matter which they contained. My work, which had been commenced on imperfect information, was, of necessity, to be new modelled, and the loss of some months more, comprising two sessions of assembly, during which the necessary attention to the duties of my office obliged me lay aside this undertaking, may easily account for the time that has been spent in completing it. In short, at every period I found something new to engage my attention, and it was with difficulty that I put a stop, at length, to my enquiries, and prepared to offer the fruit of them to the public.

Concerning the manner in which this investigation has been conducted have to say that I have adopted that kind of arrangement which appear-

ed to me the most perspicuous, and the best calculated to display the progress of the land office system from its simple beginnings to the regular, but complicated, form which it has ultimately assumed. I had originally promised no more, in respect to the ancient practice, than a bare exhibition of the conditions of plantation, and other documents, upon which it rested. Finding myself, however, enabled to comment and reason upon the design and effect of those authorities, I extended my plan, so as to present a connected history, as well as a detailed exemplification, of that practice. As to the matters purely historical which have been introduced, it will not be supposed that I lay much stress upon them, as adding to the interest, or at least to the utility, of the work. They were in some degree necessary to my design, and I was willing by the aid of those notices, trivial as they are, to give a little spirit and variety to a dull subject. It is with the same view that, instead of a continued recital, which would have been infinitely less laborious, I have arranged my enquiries under distinct heads, and applied to each the particular remarks which it required. The division of the work into two books, destined, severally, to the examination of the ancient and modern practice, was prompted by a similar motive, and, by this kind of distribution I flatter myself that I have done something to accomodate and repay that class of subscribers whose encouragement flowed more from good-will than from any interest in the professed subject of the work. These gentlemen, if the book contains any thing of entertainment, or general information, will by this arrangement be enabled to discover it, without wading through those documents and recitals which are foreign to their pursuits.

As to the style of what may be called composition, in this mixed performance, it would not be worth noticing except for the purpose of averting a criticism upon the familiarity and apparent egotism which may perhaps be found to characterize it. On this point I will only say that what may look like egotism has proceeded, in reality, from a very different sentiment. This book is presented merely as a compilation ; and, in the introductory and connecting discourses, in which the compiler has to speak in his own person, I have not thought myself entitled to use the formal style of an author, but, speaking also as a public officer, I have pursued that unstudied mode of expression which I should use if called upon, in that character, to explain the proceedings of my office. So many things, moreover, are advanced upon my own observation or opinion, and the weight attached to them is so directly referable to the source from which they proceed, that it would have been difficult to keep myself, in any degree, out of view, and therefore I have not attempted it.

In regard to the matter of this compilation, I have fulfilled, I believe, literally, all that was promised in my prospectus, except in the article of *conveyance*, concerning which I have only inserted a few laws, without attempting any comment upon them, and have omitted the *forms*, which would have swelled the book to an inconvenient size, and encreased the expence (already far beyond my original calculation) so as to leave no chance of remuneration for my labour. I have substituted what appeared more to the purpose, and this, with the further consideration that I have greatly exceeded the number of pages proposed, will, I trust, be accepted as an equivalent.

I regret much that the errors of the press in this book are so numerous, and that they so frequently fall upon words of importance, and appear still more frequently in the essential article of punctuation. I am desirous to relieve the printers from any responsibility on this score, and must therefore state that it has arisen from the circumstance of the manuscript's having been prepared under a full expectation that the publication would take place at my place of residence, and under my own inspection, and consequently prepared with a less minute exactness than it otherwise would have been. All the attention of several gentlemen in Baltimore, who, with unwearied kindness, have supplied my place in superintending the publication, has not been sufficient to prevent a considerable number

of verbal errors and omissions. The list of errata will point them out, and the reader will gratify the editor, while he consults his own convenience, in correcting them with the pen.

It remains to say how far I consider this as a *full* account of the practice of the land office. I shall not pretend that some particular subjects could not have been examined more critically, or that many things may not have been overlooked. I shall acknowledge that, in the progress of this compilation, I have frequently written under an impression that there might hereafter be found occasion to resume the subject, in a supplementary volume, the principal objects of which would necessarily be to correct any errors, and supply any omissions, that may be discovered in the present book; to adduce further examples and authorities; to illustrate particular principles, and to present any improvements, or changes, that the system may receive from legislative, or other, authority. I have made no reserve however for this purpose, but have intended to give a full and perfect account of every thing that came within my knowledge, and have in no instance either advanced or suppressed any thing on the consideration of *its effect upon the land office*. In particular I persuade myself that it will appear on the face of this work, that I have not had in view the *disturbing of possessions*, by displaying those facilities and contrivances which some individuals of the community might be inclined to embrace, to the annoyance and danger of LAND-HOLDERS. It is for the convenience and benefit of this respectable class of citizens, and not for their detriment, that these enquiries have been intended. The performance may be feeble, but the design was fair and has been prosecuted with fidelity and honour. With these remarks, I submit the result of my labour to the candid judgment of the public.

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THE

LAND-HOLDER'S ASSISTANT, &c.

BOOK THE FIRST.

HISTORY AND ANCIENT PRACTICE OF THE LAND-OFFICE

CHAPTER I.

BRIEF ACCOUNT OF THE SETTLEMENT OF MARYLAND

THE Right of the Crown of Great Britain to the territory of North America was derived from the discovery of that Continent by Sebastian Cabot, who, in the year 1498, explored a great part of the Coast, under a Commission from King Henry the seventh, and, in the name of that Monarch, took formal possession of the Country, by the name, since restricted to a particular Island, of Newfoundland.

The original discovery of the New World is, indeed, with justice attributed to Christopher Columbus, who under the auspices of the Court of Spain, in his celebrated voyage, undertaken in the year 1492, for the purpose of arriving at the East Indies by sailing westward, discovered the Islands bordering on the Coast of South America, and in a subsequent voyage found the Continent itself. The discoveries, however, of Columbus are no farther connected with the origin of the English Settlements in America than as having excited that spirit of enterprize and research which gave rise to the Commission granted to the (*a*) Cabots in 1496, and resulted in the successful voyage of Sebastian Cabot already mentioned.

But, although the assumed right of colonization took its date from the discoveries of Cabot, and though the English availed themselves of this claim so far as concerned the objects of fishing on the Coasts and of traffic with the natives,

(*a*) John Cabot, a Venetian who had settled in England, and Lewis, Sebastian, and Sanctius his sons.

no permanent Settlements were attempted until the reign of Queen Elizabeth, when, under a patent granted in the year 1584 to Sir Walter Raleigh, some small footing was effected in that part of America which now forms the State of North Carolina, and the whole Country comprising, so far as regions not actually explored can have been so comprehended, the entire extent of the present United States, was on the favourable report of the Adventurers, called Virginia, in reference, as historians observe, to its having been planted in the reign of a virgin Queen. It was not, however, until after the failure of many attempts to colonize the southern part of the Continent, and after the destruction, by the natives, or by disease and famine, of several Companies of emigrants, that a Colony even in that quarter could be said to be firmly established. This event takes its date from the arrival of Lord Delaware, in the year 1610, with three ships containing necessary supplies, just in time to bring back to their seat on James River the feeble remnant of the last despairing Colony, who were embarked for England with the resolution of wholly abandoning a Country in which they had met with nothing but disasters. About this period was commenced the settlement of the second or Northern Colony, which, under the name of New-England, comprehended all that part of the Continent northward of what is now called Delaware Bay.

In the year 1631 (*b*) George Lord Baltimore obtained from King Charles the first a grant of that part of North

(*b*) Sir George Calvert created Baron of Baltimore in Ireland by King James I. about the year 1623. Previous to this he had obtained a Grant of AVALON, being part of Newfoundland and made a settlement there at a place called Ferryland. In his second visit to that Colony, there being then a War with France, he had occasion, it is not known with what force, to perform some considerable services in recovering above twenty sail of English ships which had been taken by a French squadron, and in capturing several of the enemy's fishing ships on the Coast. He continued the plantation until his death; but in the mean time finding the climate unfavourable, and the place exposed to the attacks of the French, he turned his attention to the more inviting shores of the Chesapeak, of which he is stated to have obtained some knowledge by a personal visit to Virginia. He had been Secretary of State to King James; was a favourite Counsellor of his Successor Charles I.; and finally availed himself of a deservedly high degree of credit and favor with the latter to obtain a second Grant, exceeding all former ones in distinctions and privileges. As to Avalon, the successor of Lord George (Cecilius) upon his father's death, sent thither Captain William Hill to manage it as his Deputy, and that Gentlemen lived several years at Ferryland; but, in 1638, the Marquis of Hamilton, the Earl of Pembroke, Sir David Kirk, and others on a suggestion that Lord Baltimore had deserted that plantation, procured a Grant of the whole of Newfoundland, and dispossessed the aforesaid Deputy even of the Mansion House (built by his Lordship) in which he resided. But at the restoration of King Charles II. Sir George Calvert's patent was, on a full hearing by Commissioners appointed for that purpose, determined to be in force and not annulled by the subsequent Grant. Cecilius was accordingly reinstated in his right, and continued as has been

America which now forms the State of Maryland, and which in a history of the Country written about forty years after, when other Colonies had also been established, is described as lying " between the degrees of thirty-seven and fifty mi- " nutes or thereabouts and forty of Northern Latitude: " bounded on the South by Virginia; on the North by New " England, New Jersey, and part of New York lying on the " East side of Delaware Bay; on the East by the Ocean, and " on the West by that part of the Continent which lies in the " longitude of the first fountains of the river called Patow- " mack." The tract so granted Lord Baltimore had intended to call Crescentia, but in presenting the Patent to the King for his signature he left the naming of it to his Majesty, who proposed that it should be called Terra Mariæ, or Maryland in honour of his queen Henrietta Maria, which was concluded on, and the territory erected into a *Province* by that name.

The affixing of the Great Seal having been some time delayed, Lord Baltimore died before the Patent was completed, and a Grant of the said Province was soon afterwards made to his Son and heir Cecilius Baron of Baltimore, his heirs and assigns, bearing date the twentieth day of June 1632, by the description of " all that part of the Peninsula or Chersonese lying " in the parts of America between the Ocean on the East and " the Bay of Chesopeake on the West, and divided from the " other part thereof by a right line drawn from the promon- " tory or Cape of Land called Watkins's Point, situate in the " Bay aforesaid, near the River Wighco on the West unto " the main ocean on the East; and between that boundary " on the South unto that part of the Bay of Delaware on the " North which lieth under the fortieth degree of North La- " titude from the Equinoctial, where New England is ter- " minated; and all the tract of Land within the metes un- " derwritten (that is to say) passing from the said Bay, cal- " led Delaware Bay, in a right line by the degree aforesaid " unto the true meridian of the first fountain of the river " Pattowmack; thence verging towards the South, unto the " further Bank of the said river, and following the same on " the West and South unto a certain place called Cinquack, " situate near the mouth of the said River, where it disem- " bogues into the aforesaid Bay of Chesopeake, and thence " by the shortest line unto the aforesaid Promontory or place " called Watkins's Point." The territory thus bounded, and erected, as has been mentioned, into a Province, (being

said, to hold the plantation till his death in 1674. By what means it became afterwards neglected and abandoned so that the very name of Avalon is no longer known in Newfoundland I am not informed. The titular Dominion of the Province of Avalon was kept up by the Baltimore family till the time of Mr. Harford, who took the title of Proprietary of Maryland alone.

the first Colony distinguished by that title) was declared to be entirely separated from Virginia; not thenceforth to be in any manner considered as a part thereof, or dependent on or subordinate to that or any other colony, but to be immediately subject to the Crown of England. The Grant comprehended "all Islands and Islets within the limits aforesaid, and all "Islands &c. within ten marine leagues of the Eastern "shore, with all the Ports, Harbours, Bays, Rivers, and "Straits, belonging to the region or Islands aforesaid, and "all the soil, plains, woods, mountains, marshes, Lakes, Ri-"vers, Bays, and Straits, with the fishings of every kind, with-"in the said limits;" all mines of whatsoever kind, and the patronage and advowson of all Churches. Lord Baltimore was created absolute Lord and Proprietary of the Province, saving only the allegiance and sovereign dominion due to the Crown, and was invested with all the Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, as well by sea as by land, within the Region, Islands, Islets, and limits aforesaid, which any Bishop of Durham within the Bishoprick or County Palatine of (c) Durham in the Kingdom of England had ever enjoyed or of right could or ought to have, hold, use, or enjoy; To HOLD of the King of England and his Successors as of the Castle of Windsor in the County of Berks in free and common Socage by Fealty, only for all *Services*, and not in Capite nor by Knight's Service; Yielding therefor *two Indian Arrows of those parts*, to be delivered at the said Castle of Windsor every year on Tuesday in Easter Week; and also the fifth part of all gold and silver ore which should happen from time to time to be found within the aforesaid limits.

The Proprietary was further empowered, with the consent of the Freemen, or their Delegates, to be called together for that purpose, to make Laws of what kind soever, so that they should be consonant to reason, and not repugnant, but agreeable so far as conveniently might be to the Laws and

(c) Three of the Counties in England, to wit, Chester, Durham, and Lancaster, are called Counties Palatine: They were so called *a Palatio*, because the owners had in those Counties *Jura Regalia* as fully as the King had in his palace. They had the power of pardoning treasons, murders and felonies; They appointed all Judges and Justices of the Peace; all writs and indictments ran in their names, as in other Counties in the King's, and all offences were said to be done against their peace, and not as in other places against the peace of the King. These privileges were abridged by the Statute 27th Henry VIII, but the Grant to Lord Baltimore by referring to the highest privileges that *had ever been* enjoyed by these *Lords Palatine*, seems to comprehend the original power, and the County of Durham was selected as being the only one remaining in England in the hands of a subject. The royal rights above enumerated were exercised in the fullest manner by the Proprietary.

Rights of the Realm of England, and to Execute the Laws so made. License was given to the subjects of Great-Britain to transport themselves and their families to this Colony, and to build and fortify Castles, Forts &c. under the direction of the Proprietary, for their defence; and it was declared that those Emigrants and their posterity should continue Liege Men of the King and his Successors, and enjoy all the privileges of British Subjects, any Statute &c. to the contrary notwithstanding. They were permitted to transport from England to the Province merchandize or effects of any kind not falling within general prohibitions, and to bring or send from thence into the British Dominions the products of the Country, paying in each case the ordinary Impositions, Subsidies, Customs &c. The Proprietary was invested with the powers of a Captain General, and authorised, as such, to repel all Piracies, Invasions, or Ravages, affecting his Province, by Sea or Land, in the usual modes of warfare, and in case of rebellion, tumult or sedition, to exercise martial Law: He was empowered to erect and constitute Ports, which when established, it was declared should be exclusively the places of resort to vessels coming for purposes of merchandize; but, with a saving to subjects of the British dominions of the right of fishing within the Harbours, Bays &c. of the Province: Power was given to impose by Law taxes and Subsidies on articles imported or exported, the product of which taxes was given to the Proprietary forever, and *it was covenanted on the part of the King that neither he nor his Successors should ever impose Customs, Taxes, Quotas, or Contributions whatsoever upon the people, their property, or their merchantable commodities laden within the Province.* The remaining provisions of the Charter are those which concern the power of the Proprietary to *Grant Lands*, erect Manors &c. which with the article relating to his own *tenure* will presently be inserted at large.

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After obtaining this Grant Lord Baltimore sent out his Brother Leonard Calvert Esq. accompanied by other Gentlemen and their attendants, to the number of between two and three hundred, for the purpose of commencing a settlement. The Adventurers are represented to have been chiefly persons of considerable wealth and distinction, who left their country to avoid the inconveniences of religious intoleration. They set sail from Cowes in the Isle of Wight on the 22d of November 1633, and having touched and made some stay at the Islands of Bermudas and St. Christophers in the West-Indies they arrived on the 24th of (*d*) February following at Point Comfort in Virginia, from

(*d*) Still in the same year, according the Style of that time.

whence they shortly after sailed up the Chesapeak Bay and the River Patowmack. Having reviewed the Country, and given names to several places they selected for their first seat a town of the Indians called (*e*) YAO-COMOCO, of which, with the circumjacent land, the Governor or Leader, Calvert, made a free and fair purchase of the natives with articles suited to their state of life, and brought from England for that purpose. The prudence and justice which dictated this policy in preference to the forcible intrusion which had marked the commencement of the first Southern plantation, appear to have governed the subsequent proceedings also of the Proprietary and his Officers for extending their limits of possession, and to have produced an entire good understanding and friendly intercourse with the natives, until the jealousy of the latter was excited by the suggestions of an individual interested in defeating Lord Baltimore's views, and their enmity at length confirmed by the many efforts employed by the same person and his abettors for that purpose. These dispositions received also considerable increase from the spontaneous reasoning of the Indians upon what they observed: When we speak of justice and fair dealing in the first steps for obtaining in a Country already claimed and inhabited a footing designed to be extended far beyond the probable contemplation of the actual possessors, it must be in a limited and comparative way: Lord Baltimore's emigrants arrived in America at the season of the year and at the particular spot the most favourable for obtaining an immediate and peaceable establishment: If the natives were to give up lands which were prepared, and had served them, for tillage, it was requisite, that this should be at a season proper for commencing their agricultural operations in other parts. This consideration, with which the arrival of the English at the approach of Spring, had so happy a coincidence, doubtless facilitated the treaty and purchase that ensued: but it is also understood that the tribe with which Mr. Calvert negotiated had resolved to remove higher up and into a more populous part of the Country in order to avoid, or to be better situated for defence against, a more powerful nation with which they were then at War, and that many of them had actually gone thither. When, therefore, these Indians, after ceding only a certain District which they could spare, saw the number of strangers, their demand for more Land, and their power to obtain it by force, rapidly encreasing;—When individuals unauthorised by the colonial Government found means occasionally to procure from the natives donations of their Lands for considerations extremely inadequate, and

(*e*) Called by the English Saint Mary's;—erected some years after into a City, and the Seat of Government until the year 1694.

with which they were on reflection wholly dissatisfied, they began to apprehend their annihilation as a people, and listened the more readily to the inflammatory suggestions of the enemies of the Colony. A War, in consequence, ensued in 1642, which lasted some years, and, without having produced any thing in the nature of a conquest, was ended by the submission of the Indians, and a promise of future amity. A peace being thus concluded, Laws were made to prevent the renewal of causes of dispute. Acquisitions of Land, whether by purchase or gift, from the Indians without the consent of the Proprietary, were, both as infringing his right and committing the safety of the Colony, deemed illegal and void: It was made felony, and punishable by death, to sell or transport any friendly Indian, and at the same time declared highly penal to furnish those people with arms or ammunition. These, with other measures of a moderate and prudent cast, rendered the peace now concluded more permanent than from the temper of the Indians and the continued ill offices of Lord Baltimore's opponents and enemies might have been expected.

In a (*f*) work treating expressly of original titles to Land it has been thought not amiss to explain, so far as the preceding recital has done it, the manner in which an individual obtaining from his Sovereign an exclusive licence, with his own means, to lead out and plant a Colony in a region of which that Sovereign had no possession, proceeded to avail himself of the privilege or grant, and to reconcile or subject to his views the people occupying and claiming by natural right the Country so bestowed: but it is not intended to pursue the history of the various disputes, wars, conventions, and other transactions that arose between the Indians and the Proprietary Government concerning the more extended acquisitions which the latter from time to time found necessary to it's purposes, further than may relate to certain remnants of particular tribes who have to the present day continued to hold and occupy Lands on the Eastern Shore, under the guarantee and protection of the Government of Maryland. I must observe however that all accounts agree in ascribing to Lord Baltimore and his agents a conduct remarkably discreet, firm, and candid, in their dealings with the aborigines. In particular, an history, already referred to, of the American settlements, written in 1671, after speaking of the acquisition of St. Mary's continues " and it hath been

(*f*) I shall have frequent occasion to refer to the present undertaking by some kind of appellation: it is necessary therefore to state, once for all, that I do not by any means mean to claim for it the character usually attached to the term here employed. The book is properly speaking a *compilation*. The other name is used only as the most convenient.

" the general practice of his Lordship and those who were " employed by him in the planting of the said Province, ra- " ther to purchase the natives' interest (who will readily agree " for the same at easy rates) than to take from them by force " that which they seem to call their right and inheritance, to " the end all disputes might be removed touching the forcible " encroachment upon others, against the Law of nature or " nations." How far the practice of Colonization in Countries not free from prior occupation is in fact reconcileable with the Laws here spoken of is a question which I shall not pretend to examine; but in order to give some general idea of the manner in which this subject is viewed by those who have considered it, I shall here extract from Chalmers's Political Annals some reflections containing at least a very plausible defence of a system, which, since it has been long consecrated by the general usage of nations and is the foundation of our own political existence, we must be inclined to believe is not so deep an infringement of natural rights as the violences sometimes attending it have on such occasions caused it to be represented.

" Those voyages having been thus accomplished, and those " researches made, by virtue of Commissions under the great " seal; the Sovereigns of England acquired by the equity of " first discovery and prior possession, a title, in right of the " Crown, to a great part of the North American Continent. " When the earth was the general property of mankind, mere " occupancy conferred on the possessor such an interest as it " would have been unjust, because contrary to the Law of " Nature, to take from him without his consent: and this " state has been aptly compared to a theatre, common to all; " but the individual, having appropriated a place, acquires a " privilege of which he cannot be dispossessed without injus- " tice. Yet, man having a right to the world from the gift of " the benificent creator, must possess and use the general es- " tate according to the grant, which commanded them to mul- " tiply and subsist by labour; and little would the earth have " been peopled or cultivated had men continued to live by " hunting, or fishing, or the mere productions of nature. The " roving of the erratic tribes over wide extended deserts does " not form a possession which excludes the subsequent occu- " pancy of emigrants from countries overstocked with inhabit- " ants. The paucity of their numbers, and their mode of " life, render them unable to fulfil the great purposes of " the grant. Consistent, therefore, with the great Charter to " mankind, they may be confined within certain limits. Their " rights to the privileges of men nevertheless continue the " same: and the Colonists who conciliated the affections of " the aborigines, and gave a consideration for their territory,

" have acquired the praise due to humanity and justice. Na-
" tions, with respect to the several communities of the earth,
" possessing all the rights of men, since they are aggregates
" of men, are governed by similar rules of action. Upon
" those principles was founded the right of emigration of old:
" upon those principles the Phenicians and Greeks and Car-
" thagenians settled Colonies in the wilds of the earth."

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The person to whom allusion has been made as the most active and inveterate enemy of Lord Baltimore's infant Colony was Captain William Cleyborne, who had, in the year 1631, obtained a licence, under the King's sign manual to trade in those parts of America for which no exclusive patent, for that purpose, had before been granted; and, under that authority had begun to plant a Colony on Kent Island, and laid claim by right of prior settlement to that and other Lands comprehended in Lord Baltimore's Grant. Without adopting all the asperity of language which has generally been used in speaking of this (*g*) man, and of his efforts to defeat the grant by which his own claim had been supplanted, it must be acknowledged that his conduct to Lord Baltimore was hostile in the highest degree, and his schemes and proceedings against that nobleman's interest unfair and insidious, but I do not perceive that the original ground of his opposition was quite so weak as has been represented, and it is certain that the high hand with which the Proprietary and his Government undertook to controul and chastise the pretensions of Cleyborne was not calculated to produce submission or acquiescence in a person of his character. He had held a place in the Government of Virginia, and his claims and complaints were in some degree connected with those of the people of that Colony, who also made violent opposition to the grant of Maryland, as a dismemberment of their ancient Dominion. After a contest of some years continuance, not without bloodshed, Cleyborne, being the weakest, had recourse to other means. He represented his claims and injuries in a petition to the King, who referred the whole matter in dispute to the Commissioners of Colonies, and by them it was on the 4th of April 1638, on hearing of all parties, determined that the Lands in question belonged absolutely to Lord Baltimore; that no planta-

(*g*) He has been styled "the bane," the "evil genius," &c. of Maryland. His conduct in exciting the Indians to war against his countrymen cannot be vindicated—but judging from what appears on record, I consider him as a man trifled with by the crown; for the traffic intended in his licence, being that of furs, &c. with the natives, could not well be carried on without settlements Being turned over and subjected to Lord Baltimore without any compensation for his disappointment, he had at least all the excuse that can arise from the highest provocation for his subsequent procedures.

tion or trade with the Indians ought to be allowed within the limits of his patent without his permission, and that, in regard to the violences complained of, the parties should be left to the ordinary course of justice. In like manner the privy council of England upon the complaints of the Virginia Planters, just mentioned, thought proper to leave Lord Baltimore to his patent, and the complainants to the course of Law; directing, however, that good correspondence and free commerce should be maintained between the two Colonies, and mutual assistance be given in case of a war with the natives. As to Cleyborne, seated with his adherents upon Kent Island, from whence it has been alledged that Burgesses were sent to the assembly of Virginia, he had constantly refused to submit to the jurisdiction of Maryland, and Lord Baltimore who foresaw the mischiefs that must follow if a band of refractory strangers was permitted to continue nestled in the heart of his province, gave orders in 1634 for seizing him, if he did not submit to his government. He was not taken, however, but added to his refusal of obedience the ill offices that have already been mentioned; insinuating among other things to the Indians that the new comers were Spaniards and enemies to the Virginians. He was at length indicted and found guilty of murder, (*h*) piracy and sedition, but made his escape, and his estate was confiscated. A bill was afterwards passed for his attainder as having fled from justice, but he kept out of reach, and at a distance continued his hostilities. In the mean time further attempts were made in England to invalidate the Charter of Maryland, grounded generally on the ancient Virginia Patents, which were held by some Lawyers, notwithstanding the decision of the Courts of Justice to the contrary, to be still in force, and which if re-established in their original form, would, by including the province of Maryland, annul its Charter. But partly through the disinclination of the people of Virginia themselves to fall again under the government of their ancient (*i*) corporation, and the direct opposition of their assembly to the measure, these attempts were not brought to any formal issue.

Cleyborne having, after the decision of 1638, no longer any expectation of recovering what he deemed his right by means of the regal government of England, began to associate with its (*j*) opposers, and, in the progress of his intrigues

(*h*) It is but fair to remark that these crimes are supposed to have been all included in an open resistance and warfare against Lord Baltimore's authority.

(*i*) Virginia was originally under the rule of a great commercial association denominated "The Treasurer and Company of Virginia."

(*j*) The War between the King and Parliament broke out in 1642, and the Colonists of Maryland who had, from the commencement of the disputes which led to that event, taken sides with considerable violence in

in Maryland was joined by Captain Richard Ingle, who, in 1644, found means to raise an insurrection against the proprietary's government; forced the Governor Leonard Calvert, to fly to Virginia for protection and aid; seized upon the records, and the great Seal, which last was never recovered; assumed with his adherents the administration of Government, and in a word, plunged and kept the Colony in all the horrors of anarchy and intestine war, (for he was opposed, and finally with effect) for the space of about two years, at the end of which the government was re-established, and a free pardon, with a few particular exceptions, accorded to those concerned in the disturbance. Lord Baltimore did not forget to reward those who had taken a lead in opposing this dangerous insurrection, as appears by several Grants of Manors reciting the meritorious services of the grantees. As the latent instigator of these occurrences Cleyborne was noticed by an Act of Assembly "prohibiting all compliance with Willi-"am Cleyborne in opposition to the proprietary's right and "interest." And this with the watchfulness of the government, kept this troublesome man in some degree of constrained quiet, until, in a few years after, he appeared in a new character, and such as contrary to every reasonable calculation, enabled him to repay a part of the mortifications and disgraces he had suffered, on the very spot where they had been inflicted. This was soon after the death of Charles I. when Oliver Cromwell, having assumed the reins and settled the plan of Government in England, found time to turn his attention to the plantations. Although the Province of Maryland had not been expressly declared in a state of opposition to the Protector's authority, its Governor, Greene, had given umbrage by proclaiming the nominal accession of Charles II. and by the ostentation of a *general pardon* usual on real occasions of that kind. Other circumstances concurring to render Lord Baltimore's administration more than suspected, in September, 1651, a Commission was issued to Richard Bennett, Edmund Curtis and *William Cleyborne* for reducing, settling, and governing the Colonies within the Bay of Chesapeake. In the subsequent year, these Commissioners issued a variety of orders in regard to Maryland, which, though *reduced to the obedience* of the Commonwealth, was suffered still to remain in the hands of the proprietary, but in the name of the *Keepers of the Liberties of England*, until the year 1654, when the before mentioned (*k*) Bennet and Cley-

the contest, were now formally divided into two parties. It is not intended however to insinuate that the *republican* party in general countenanced Ingle's Insurrection, and but few names of any note are mentioned in connection with this incident.

(*k*) They could not actually administer the Government themselves, having also to attend to the Colony of Virginia.

borne appointed William Fuller, Richard Preston, and eight others to be Commissioners "*for the well ordering, directing* "*and governing the affairs of Maryland under his highness the* "*Lord Protector;*" in consequence of which Commission the provincial records were delivered up to *Durand*, the new Secretary, and all power withdrawn from Lord Baltimore and his officers. Previous to this final seizure of the government by Cromwell, the contentions between the friends to the new order of things, and those of the Proprietary had arisen to an open rupture, and a civil war ensued, which after some skirmishes was ended by a decisive engagement, in which, Lord Baltimore's Governor, Captain William Stone, being defeated, was taken prisoner, and condemned to be shot; but the sentence was not executed, owing to the refusal of the soldiers, on account of their respect for his character, and the benefits many of them had received from him, to perform it. He underwent, however, a long and rigorous confinement. In the mean time, the Government of Cromwell's Commissioners was not wise and temperate enough to preserve the public tranquility, which was again disturbed, in the year 1656, by an insurrection set on foot by Josias Fendall, a man as restless and intriguing as Cleyborne: but this commotion served only, in its suppression, to encrease the rigour of the new administration, and the Province continued in a very distracted state, when, in the year 1658, the Government was, upon articles previously agreed on, surrendered by the Commissioners to Fendall, whom the Proprietary, judging of his zeal from the turbulence of his character, had appointed Governor of the Province. The defection of this man is the last historical incident of which I shall for the present take notice: upon the Assembly's meeting in 1659, he continued, by a deep wrought intrigue, to dissolve the upper House, and surrendered to the Burgesses his remaining powers under Lord Baltimore, whose authority in Maryland it was the object of this unexampled proceeding wholly to destroy: In pursuance of this design, he accepted from the lower House a Commission as Governor; Gerrard and Utye, his confederates in the scheme, and Slye the Speaker of the House, being appointed his Council. He continued not long, however, to exercise the power so illegitimately acquired. The Proprietary having, on information of his treachery, appointed his Brother Philip Calvert Governor; Fendall was tried and found guilty of high treason, but in the end punished only by a pecuniary fine and an incapacity for future places of trust. Having brought this imperfect sketch to a period at which the affairs of Maryland began to assume some appearance of stability, for the restoration of Charles II. confirmed the reinstatement of the Proprietary in his *Government*, which from thenceforth con-

tinued in the Baltimore family until the English Revolution of 1689. I shall pass now to the next subject proposed in this undertaking.

CHAPTER II.

EXPLANATION OF TENURES.

IT has been seen, in the notice already taken of Lord Baltimore's Charter, that he was to HOLD of the Grantor, his heirs and successors, Kings of England, by a certain specified *tenure*, and every possessor of an old patent knows that the Proprietary's grants of land always contained (mutatis mutandis) a clause of similar import. It is proposed to give a brief explanation of the nature and object of those conditions of tenure. What concerns that of the Proprietary, together with the style of the Dominion and Royalty conferred upon him, is found in the 5th article which is here recited.

" And We do by these presents, for Us, our heirs and " successors, make, create, and constitute him, the now " Baron of Baltimore, and his heirs, the True and Absolute " Lords and Proprietaries of the Region aforesaid, and all " other the premisses (except the before excepted) saving al- " ways the faith and allegiance and sovereign dominion due " to us, our heirs and successors; to Have, Hold, Possess " and Enjoy the aforesaid region, Islands, Islets, and other " the Premisses, unto the aforesaid now Baron of Baltimore, " and to his heirs and assigns, to the sole and proper behoof " and use of him, the now Baron of Baltimore, his heirs and " assigns forever. To Hold of Us, our heirs and successors, " Kings of *England*, as of our Castle of Windsor, in our " County of *Berks*, in free and common Soccage, by Fealty " only for all services, and not in *Capite*, nor by Knights ser- " vice, Yielding therefore, unto Us, our heirs and successors " Two Indian Arrows of those parts, to be delivered at the " said Castle of *Windsor*, every year, on Tuesday in Easter " week; and also the fifth part of all Gold and Silver Ore " which shall happen from time to time to be found within " the aforesaid limits."

The article which authorizes grants of Land from the Proprietary and directs the kinds of estate which he may convey is as follows:

" And Furthermore, of our special grace, and certain " knowledge, and mere motion, We have given, granted, " and confirmed, and by these presents, for Us, our heirs " and successors, do give, grant, and confirm, unto the a- " foresaid now Baron of Baltimore, his heirs and assigns, " full and absolute licence, Power, and Authority, that he, " the aforesaid now Baron of Baltimore, his heirs and as- " signs, from time to time hereafter, for ever, may and can, " at his or their will and pleasure, assign, alien, grant, de- " mise, or enfeoff so many, such and proportionate parts and " parcels of the Premisses to any person or persons willing " to purchase the same, as they shall think convenient; to " have and to hold to the same person or persons, willing " to take and purchase the same, and his and their heirs and " assigns, in Fee simple or Fee tail, or for term of life, lives " or years; to hold of the aforesaid now Baron of Baltimore " his heirs and assigns, by so many, such, and so great ser- " vices, customs and rents Of This Kind; as to the same " now Baron of Baltimore, his heirs and assigns, shall seem " fit and agreeable, and not immediately of Us, our heirs " or successors. And We do give, and by these Presents, " for Us, our heirs and successors, do grant to the same " person and persons, and to each and every of them, Li- " cence, Authority, and Power, that such person and per- " sons may take the premisses, or any parcel thereof, of the " aforesaid now Baron of Baltimore, his heirs and assigns, " and hold the same to them and their assigns, or their heirs, " of the aforesaid Baron of Baltimore, his heirs and assigns, " of what Estate of inheritance soever, in Fee simple or " Fee tail, or otherwise, as to them and the now Baron of " Baltimore, his heirs and assigns, shall seem expedient; the " Statute made in the Parliament of Lord Edward, son of " King Henry Late King of England, our Progenitor, com- " monly called the Statute " Quia Emptores Terrarum" " heretofore published in our Kingdom of *England*, or any " other Statute, Act, Ordinance, Usage, Law, or Custom, " or any other thing, cause, or matter, to the contrary there- " of heretofore had, done, published, ordained or provided " to the contrary thereof notwithstanding."

Tenures in general are derived from the feudal (or feodal) system, which prevailed from time immemorial in most of the nations of Europe, and was introduced and established in England in the reign of William the Conqueror. The great object of this institution was a ready and efficient means of national defence. It was founded on a maxim, or principle, that all lands were originally the property of the Sovereign, and that all titles must consequently be derived imme-

diately or otherwise from his grants. This, in the origin of the system, was in some sort the fact; for it was first exercised on Lands acquired by conquest. The Sovereign or General possessed of territory in this way granted large tracts of it to his Chief Officers and other deserving followers, under a condition of their performing certain services to or for the grantor when required: These Officers parcelled out a part of the Lands so acquired to their inferiours, and those in like manner to others, with similar reservations or conditions. When the whole of a Conquered Country came therefore to be occupied by the Conquerors and their descendants, (for we suppose the original people either extirpated or despoiled of all possessions,) it is plain that the titles of all the Lands held by individuals must be derived from the conquering King or General: but, in regard to those Countries in which the feudal Law was freely received and adopted, this principle was but a fiction. The Law, itself, however, having been received in England, this maxim, upon which the whole fabrick rested, was necessarily recognized with it, and is now an incontestible principle in the common Law of that Country, being as *Blackstone* expresses it "*the grand and fundamental principle of all feodal tenures.*"

But this System while it encreased the national strength, being in fact, from the nature of the services required, a general military organization, became by means of doctrines not understood at the time of its introduction, but imported afterwards by the Norman Lawyers, and by abuses even of those doctrines, a source of individual hardship not to be borne by a people above the condition of absolute slaves. Although, therefore, the Norman Conqueror and his son William Rufus enforced the feudal principles in their utmost rigour, their successor Henry I. was obliged to consent to the abolition of the greater grievances, reserving however the grand original maxim of feudal tenure: but, the charter granted by Henry for this purpose was soon infringed, and the former hardships revived and augmented, until the Barons, or principal feudatories, rose up in arms in the reign of King John, and extorted from that monarch the famous *Magna Charta*, by which some limits were set to the complicated slavery under which all conditions of English subjects had so long groaned. The constitution of feuds subsisted however in considerable vigour until the reign of Charles II. when the military tenures, with their burthensome appendages, were abolished by Act of Parliament, and the others, with a few particular exceptions, resolved into that of *Free and common Soccage.* As the grant and settlement of Maryland however, were prior to this amelioration, it is necessary to take notice of what are called the *ancient English tenures:*

Of these there are stated by Blackstone, (from whom it will be perceived I chiefly take my information) to have been of the *lay* kind, as distinguished from those which were ecclesiastical, four different species, which took their denomination from the " nature of the several services or renders that were due to the Lords from their tenants." These services in respect to their quality were either *free* or *base* services; in respect to their quantity and the time of exacting them were either *certain* or *uncertain*. Free services were such as were not unbecoming the character of a soldier or a freeman to perform. Base services were such as were fit only for Peasants or persons of a servile rank. " The certain services " whether free or base, were such as were stinted in quanti- " ty, and could not be exceeded on any pretence; as, to pay " a stated annual rent, or to plough such a field for three days: " The uncertain depended upon unknown contingencies; " as, to do a military service in person or pay an assessment " in lieu of it *when called upon;* or to wind a horn whenever " the Scots invaded the realm, which are free services, or to " do whatever the Lord should command, which is a base or " *villein* service."

Tenure is a stipulated condition under which (among other things) real property is *held:* The person holding Land under feudal tenure is called a *tenant*, and the property itself a *tenement*. Of tenements there were two kinds, frank tenement and Villenage: Of the former some were held freely, in consideration of homage or Knight service; others in free socage with the service of fealty only. Of base or Villein services I shall say nothing further, as they are not perceived to have taken root in Maryland, although the better kind of those services was evidently designed by Lord Baltimore to be introduced in reference to such of the *Indians* as might accept of copyhold estates. Of the two kinds comprehended in Frank tenement the tenure by Knights service, or in Chivalry, was the most universal and esteemed the most honorable species, but drew after it certain fruits and consequences so burthensome as to make it less desirable than that of common socage, and was attended by the particular disadvantage of uncertainty, at least in respect to time, in the services to be performed. The services by free socage were like the others *free* and *honourable* in their nature, and had the advantage of being reduced to an absolute certainty. It is by this tenure, to wit, *free and common Socage, by fealty only for all Services*, that Lord Baltimore held the grant of Maryland, and under the same his grants were made to the settlers.

As to the derivation and general meaning of the term *socage*, Judge Blackstone distinguishes it from tenure in Chival-

ry by the certain or fixed nature of its services, in opposition to the uncertain or arbitary services of the other, and reasoning from this favourable distinction, derives it from the Saxon word *soc*, signifying liberty or privilege, to which word a usual termination being added makes socage, in latin *socagium*, meaning a free or privileged tenure. Mr. Blackstone, however, is in this matter opposed to earlier writers, who derive socage from *soca* an obsolete latin word signifying a plough, and who assert that socage tenure consisted originally of nothing but services of husbandry, as, to plough, sow, reap, &c. for the Lord ; that this service was in process of time changed by consent into an annual rent, but, in memory of its origin, still retained the name of *socage* or plough tenure. Without claiming to be the author of the first mentioned etymology, Blackstone reasons strongly in favour of it from the great immunities which the tenants in free socage always enjoyed ; so superiour, as he observes, to those of the tenants in Chivalry that in the reigns of both Edward I. and Charles II. when reforms were on foot, it was thought a point of the utmost importance and value to the tenants to reduce the tenure by Knight Service to *Frank ferme* or tenure by socage. Whatever may have been the real origin of this species of tenure it was, without the least doubt, at the time of Lord Baltimore's grant, an honorable and advantageous one, as there are reasons to believe that the Charter was in a great measure penned by his father Sir George Calvert for whom as has been stated it was first designed.

Having, as he supposes, settled the meaning of the word, Blackstone deems it probable that the socage tenures were not among the feudal establishments brought over by William the Norman, but were the relics of Saxon liberty retained by such persons as had neither forfeited them to the King nor been obliged to exchange them for the more honourable, but also more burthensome, tenure by Knights service, and instances in support of his conjecture, the tenure called *Gavelkind*, now acknowledged to be a kind of socage tenure, but which was certainly a Saxon custom that withstood the innovations of the Norman Conqueror.

It would lead me much too far to pursue, even in this hasty manner, the disquisitions of the learned writer whom I take for my text on the subject of socage tenure, into which he resolves various customs and incidents that do not appear to have been in view in the Charter of Maryland, such as Reliefs, Primer Seizins, Wardships, &c. but fines for alienation, and Escheats, which he deems to have been due for lands holden of the King in capite, as well by socage tenure, as by the tenure of Knights service, have, something to do

with the subject of our enquiry, and will in their proper places receive due notice. To close our explanation of socage tenure, it is to be observed that this is deemed to include under it all other methods of holding free lands by certain and invariable rents and duties :—Among these is *Petit Sergeanty*, which, as defined by Littleton, " consists in holding lands of the King by the service of rendering to him " annually some small implement of war, as a bow, a sword, " a lance, an arrow, or the like." It is possibly under this custom that Lord Baltimore was bound in acknowledgement for his grant of Maryland to deliver annually at the King's Castle of Windsor " *two Indian arrows of those parts.*" Services and rents are very much confounded with each other in all accounts of feudal customs, but as Lord Baltimore held by fealty in lieu of other services, and as the payment of two arrows is not a personal service, the render or " yielding" of those implements ought probably to be considered as an annual rent. In like manner, the Proprietary, instead of a rent of real or adequate value, frequently subjected his tenants only to the annual render of some unimportant article, as, a bushel of corn, a capon, an Indian arrow, a buck's foot, &c. This was, in both cases, holding by fealty and a fixed rent, which is among the most (*a*) usual of tenures in socage : In regard to the obligation of fealty, which signifies allegiance and fidelity to the Lord or grantor, it is to be observed that, according to a fundamental doctrine of the feudal Law, this supposes protection on his part, and on the same ground of reciprocal justice the Lord could not alienate his signory, and transfer to another the services due from his tenants, without their consent ; but, according to the ordinary course of things between the strong and the weak this restraint was not so effectual or permanent upon the Lords as were theirs upon their tenants. I have here given, as I presume an explanation of tenures sufficient for the end in view, which is to satisfy the curiosity, and in some small degree to enlighten the ideas of those landholders who are not in the way of learning from full and formal treatises the meaning of those terms which express the original tenure of their estates. The Gentlemen of the Law will readily conceive that I have not intended to instruct *them* and will view this attempt, in which a want of entire accuracy would be of little consequence, with indulgence.

I proceed now to what concerns the erection of Manors, for which purpose power was given to Lord Baltimore by the 19th article of the Charter which runs as follows.

(*a*) Others are by homage fealty, and rent ;—by homage and fealty without rent ;—by fealty and certain corporal service ; and by fealty only without any other service.

" We also, by these Presents do give and grant licence to " the same Baron of Baltimore, and to his heirs, to erect " any parcels of Land within the Province aforesaid into " Manors, and in every of those manors to have and hold a " Court-Baron, and all things which to a Court-Baron do " belong; and to have and keep view of Frank-Pledge, " for the conservation of the peace and better government of " those parts, by themselves and their Stewards, or by the " Lords for the time being, to be deputed of other of these " manors when they shall be constituted, and in the same to " exercise all things to the view of Frank-Pledge belonging."

MANORS, which are of still more ancient date in England than the establishment of the feudal Law, were large Districts of Land held by Lords or great personages, who kept in their hands so much ground as was necessary for the use of their families, which were called *Demesne Lands*, being occupied by the Lords and their servants: The other, called Tenemental Lands, being distributed among their tenants. These last were held under two different modes of tenure, and from those tenures took two denominations, viz. Book or Charter Land, which was held by deed under certain rents and free services, and Folkland, which was held by no assurance in writing, but distributed and resumed by the Lord at his discretion. Of the last mentioned kind we shall have no further occasion to speak, as such a tenure was never introduced in Maryland. The residue of the manor, being uncultivated, was termed the Lords Waste, and served for public roads and for common of pasture to the Lord and his tenants. Manors were formerly called Baronies, and in later times Lordships. Each Lord or owner of a manor was empowered to hold a domestic Court called the Court Baron for redressing misdemeanors and nuisances within the manor, and for settling disputes of property among the tenants. This Court is stated to be an inseparable ingredient of every manor.

The view of Frank-Pledge, usually called a Court Leet, was a Court of Record held once in the year within a particular hundred, lordship, or manor, before the Steward of the Leet, being the (*b*) King's Court, granted by Charter to the Lords of those hundreds or manors. Its original intent was to view the *Frank-Pledges* that is the freemen, within the liberty, who were all mutually Pledges for the good behaviour of each other.

Those Barons or Lords who held of the crown frequently granted out to others large portions of their manors, which were also erected into manors, and these inferiour Lords to-

(*b*) In Maryland the Proprietary's Court.

third persons, and so on, every subdivision being still capable of becoming a manor; but, as all manors had the same (c) privileges, the superiour Lords found that by this method of subinfeudation, as it is called, they lost their feudal profits of Escheats, &c. which fell into the hands of the mesne or middle Lords as being the immediate superiours of the *terre tenant*. This gave rise to the statute *Quia Emptores* in the reign of Edward I. which directed that in all sales or feoffments of land the purchaser should hold not of his immediate feoffor, but of the chief Lord of the Fee, of whom the seller himself held it. The operation of this statute, the reader will have observed was, dispensed with in the grant to Lord Baltimore, whose tenants it was conceded should hold of him, and not of the crown. How far this exemption from the statute destroyed its force beyond the Proprietary's immediate tenants is not clearly perceived, nor does the point appear to have been well settled in Maryland; for, many questions arose relative to the rights of the Lords or owners of manors in opposition to those of the Proprietary as Chief Lord of the Fee. The practice of subinfeudation does not seem however to have been permitted much to Lord Baltimore's prejudice, as all fines for alienation, and Escheats for want of heirs appear to have gone to him, and not to the proprietors even of the most extensive manors which he granted; but there are some instances to shew that Escheat or forfeiture for non-payment of rent and on other accounts, was claimed by the Lords or owners of large manors, which as to the article of rent was perfectly fair in respect to the Proprietary, as he received from the Lord himself his stipulated rent for the whole manor. The example which will presently be given of a grant of a manor will shew what privileges he assigned expressly to his most favoured tenants, and the rest are presumed to be reserved for his own benefit.

Of Escheats, which have frequently been mentioned I shall in this place only state the original doctrine as laid down by Blackstone, who defines it to be "the determination of "the tenure, or dissolution of the mutual Bond between the "Lord and tenant, from the extinction of the blood of the "latter either by natural or civil means. "If," says this writer, "he died without heirs of his blood, or if his blood, "was corrupted and stained by commission of treason or fe-"lony; whereby every inheritable quality was entirely blot-"ted out and abolished. In such cases the land escheated, "or fell back to the Lord of the fee; that is, the tenure was

(c) Some manors had special or extraordinary privileges, but to the extent of the customary and established privileges the large and the small manors were upon an equality.

" determined by breach of the original condition, expressed " or implied in the original donation. In the one case there " were no heirs subsisting of the blood of the first feuda- " tory or purchaser, to which heirs alone the grant of the " feud extended : In the other, the tenant, by perpetrating " an atrocious crime, shewed that he was no longer to be " trusted as a vassal, having forgotten his duty as a subject ; " and therefore forfeited his feud, which he held under the " implied condition that he should not be a traitor or felon. " The consequence of which in both cases was that the " gift, being determined, resulted back to the lord who gave " it :" In this account of the principle of Escheat, Blackstone speaks of it as a consequence of the tenure in Chivalry, but it is presumed to have been suffered to remain as an incident to socage tenure by the Act of Parliament already mentioned.

CHAPTER III.

CONDITIONS OF PLANTATION, PROCLAMATIONS, ORDERS, &c.

HAVING thus traced the origin and early history of the Province of Maryland ; having noticed the most important articles of the Charter, and endeavoured to explain the tenure under which it was granted, and the immunities which it conferred ; having also given some account of the measures adopted by the Proprietary for realizing the intention of his grant, by obtaining the possession or the uncontested ownership of Lands for the purpose of settlement, we are next to consider the method pursued, and the inducements held out, for procuring the emigration of Adventurers, as the early settlers were appropriately called. This was by proposals made and published under the hand and seal of the Proprietary in England by the title of *Conditions of Plantation*, for which the settlement of the elder Colonies had undoubtedly furnished precedents both in form and substance. The first of these appears by various references to have been published in the year 1633, and the terms therein " propounded" and promised are to be inferred from the grants subsequently directed to be made to those persons who had become entitled to Land under those first conditions ; but the document itself is not found on record, and probably never was recorded or published in this country. The oldest conditions of Plantation on record are dated at Portsmouth

in England, the 8th day of August 1636, and are here inserted at large.

"Whereas the Adventurers to plant that our Province of Maryland have made suit unto us that we would be pleased to grant unto them under our Great Seal of our said Province such proportions and quantities of land there upon such considerations and agreements as we have heretofore propounded and promised to Grant the same unto all such adventurers forasmuch as we are bound in honour really to perform the same in all points, These are therefore to will and authorize you that presently upon receipt hereof you make or cause to be made under our Great Seal of that our said Province unto every first Adventurer for every five men aged between sixteen and fifty years which such Adventurer did bring into our said Province to inhabitt and plant there in the year of our Lord 1633 and unto his heires forever, a grant of two thousand acres of Land of English measure for the yearly rent of 400 lb. of good wheat and to every Adventurer which in that year did bring a less number than five men into that our said Province of the ages aforesaid to inhabitt and plant there and unto his heires forever a grant of one hundred acres of Land of like measure for himself and one hundred acres more for his wife (if he brought any) and for and in respect to every servant, and fifty acres for every child under the age of sixteen years for the rent of 10 lb. of wheat yearly for every fifty acres and every other adventurer which hath adventured to transport men into our said Province of the age aforesaid in the years of our Lord 1634 and 1635 for every ten men which such Adventurer did bring into our said Province in either of the said years and to his heires forever a grant of two thousand acres of Land of the like measure for the yearly rent of 600 lb. weight of good wheat and to every other adventurer which in either of the said years did bring a less number than ten men as aforesaid and to his heires forever a grant of one hundred acres of land (of like measure) for himself and one hundred acres for his wife (if he brought any) and for and in respect of every such servant one hundred acres and for every child under the age of sixteen years fifty acres for the yearly rent of 10 lb. weight of wheat for every fifty acres and to every other adventurer which hath adventured to plant and transport any men into our said Province, since the year of our Lord 1635 or which at any time hereafter shall transport any men of the age aforesaid to inhabitt and plant there untill some other or further conditions of plantation shall by us be propounded and published

to adventurers and an authentic copy of such conditions by us signed and transmitted into our said Province for every five men which he or they shall so transport thither and to his or her heires forever a grant of one thousand acres of English measure for the yearly rent of twenty shillings to be paid in the commodities of the country for every such thousand acres and to every other Adventurer which within the time next aforementioned hath or shall transport any number of persons less than five a grant of one hundred acres of land for him or herself and one hundred more for and in respect of his wife (if he brought any) and as much for and in respect of every man servant and fifty acres more for and in respect of every child under the age of sixteen years and for and in respect of every maid servant under the age of fourty years which he or she hath or shall so transport thither and to his or her heires forever for the yearly rent of twelve pence for every fifty acres.

And We do further Will and authorize you that every two thousand acres, and every three thousand acres, and every one thousand acres of land so to be passed or granted as aforesaid unto any Adventurer or Adventurers, be erected and created into a mannor to be called by such name as the Adventurer or Adventurers shall desire.

And We do hereby further authorize you that you cause to be granted unto every of the said Adventurers within every of their said mannors respectively, and to his or their heires a Court Barron and Court Leet, to be from time to time held within every such mannor respectively. And to the end you may the better be informed in what manner to pass every such grant, Court and Courts as aforesaid, according to our intention Wee have sent unto you, under our hand and seal a draught of a grant of a Mannor Court Leet and Court Barron, and a grant of a Freehold, which presidents you are to follow, changeing only the Adventurers names, the rents and Conditions of Plantation as the case shall require; for doing whereof this shall be your Sufficient Warrant, So we bid you heartily farewell. Given at Portsmouth, the eighth of August, 1636.

Signed C. BALTIMORE.

To our dear Brother Leonard Calvert, Esq. and our Lieutenant Generall of the Province of Maryland, or to any other our Lieut. Generall there for the time being."

LIB. A. B. and H. folio 61, &c.

By this Instrument, which is in part retrospective, and confirmatory of the former conditions, it may be perceived

that the early emigrations consisted of companies of people, brought out under the patronage of persons of ability who in having been at the expence of their transportation acquired a right not merely to as much land as those individuals would separately have been entitled to, but to quantities in an advanced proportion according to the number of dependents thus emigrating, under their protection. It will be seen also that the terms were varied according to the periods of emigration, doubtless upon the principle that the inconveniences and dangers of the undertaking were gradually diminishing, and the lands still faster acquiring a real value. The conditions required that the persons by or for whom land might be claimed should have come into the province " to " inhabit and plant there," and this provision was afterwards, in particular cases at least, reduced to an express stipulation for a certain number of years. The grants to the Adventurers were, as appears by subsequent declarations to be of *an indefeasable Estate of Inheritance in fee simple to them and their heirs forever*; for which the Act of immigration for the purpose of settling in the Province was the sole condition of purchase, but with a perpetual reserved rent in every case; this being the basis of the Revenue which the Proprietary meant to draw from his acquisition, independent of the product or profits of those lands which he from time to time directed to be reserved and retained for his permanent Estate. Finally, in order to give the greater dignity and strength to this new Establishment and pursuing the spirit of the Charter in regard to the Article of tenure, which at that time formed a part of all grants from persons capable of prescribing it, the Proprietary directed that every distinct body of one, two, or three thousand acres so to be passed and granted to any Adventurer, should be erected into a manor, by such name as the owner should desire, with the privileges of Court Baron and Court Leet, for which purpose as well as for common or freehold grants the necessary (*a*) forms were transmitted.

Soon after these conditions the Proprietary by the following Letter directed certain portions of the town lands of St. Mary's to be granted to the first Adventurers, and smaller quantities to those of subsequent periods up to the 13th of August 1638.

—

" DEAR BROTHER,

(L. S.) " I would have you to pass in Free-hold to every " of the first Adventurers that shall claim or desire it,

(*a*) These forms are not now to be found otherwise than in the Patents, &c. drawn, it is presumed, in conformity with them.

" and to their heirs, ten acres of Land within the plats assigned " or to be assigned for the town and fields of St. Mary's for " every person that any of the said adventurers transported " or brought into Maryland, according to their conditions " first published, and five acres of land to every other adven- " turer for every other person which he hath or shall transport " thither since that time of the first plantation until the thir- " teenth day of August which shall be in the year of our " Lord 1638.—And for so doing this shall be your War- " rant. Given under my hand and seal at Warden Castle " in the Realm of England the 29th August, 1636.

" CECILIUS BALTEMORE.

" *To my dear Brother Mr. Leonard Calvert, Esq.*
" *my Lieutenant General of the Province of*
' *Maryland.*"

LIB. NO. 1, folio 30.

The next conditions found on record were published in 1641, when the colony was at the eve of a war with the Indians, which circumstance probably gave rise to the particular condition imposed on the male emigrants relative to arms and ammunition. I shall here insert also this document and without further intermediate comment, such of the subsequent conditions, proclamations, &c. as may be requisite, by way of foundation for the account to be given of the early proceedings under them. Those of later date will be introduced as occasion may require in the course of our further examination.

" *Conditions propounded by the Right Hon'ble Cecilius Lord Baltimore Lord Proprietor of the Province of Maryland in the parts of America to such persons as shall adventure or go to plant in the province aforesaid which Conditions are to begin from the feast of the Annunciation of the Virgin Mary* 1642 *and to continue until new or other Conditions of Plantation for the said province shall be published under his Lordship's hand and seal within the said Province.*

Imprimis. What person soever being of British or Irish discent that shall be at the charge to transport into the Province of Maryland himself or his deputy with any number of able men between the ages of sixteen and fifty years of age of the discent aforesaid provided and furnished with arms and ammunition according to a particular hereunder exprest or any number of Women between the ages of fourteen and forty-three shall be granted unto every such adven-

turer for every twenty persons he shall so transport thither in oneyear a proportion of good land within the said province containing in quantity two-thousand acres of English measure which said land shall be erected into a Mannor and be conveyed by Grant under the seal of our said Province to him or her and his or her heirs forever in socage tenure with all such Royalties and Privileges as are usually belonging to Mannors in England rendering and paying yearly unto his Lordship and his heirs for every such Mannor a quit-rent of forty shillings sterling per annum to be paid in the commodities of the country and such other services as shall be generally agreed for publick uses and the common good.

Item.—What person soever of the discent aforesaid shall at his or her own charge transport him or herself and any lesser number of persons men or women than twenty of the descent aforesaid and aged and provided as abovesaid he or she shall have assigned to him or her and his or her heirs and assigns forever for and in respect of him or herself and every such person as aforesaid fifty acres of land within the said Province to be holden of some Manor of his Lordship's within the said Province in Free Soccage paying therefore yearly a quit-rent of twelve pence sterling per annum to his Lordship and his heirs for every fifty acres in the commodities of the country as aforesaid.

Item—Any person of the discent aforesaid that shall at his or her own charge transport thither any Children of the discent aforesaid that is to say Boys under the age of sixteen years and Girls under the age of fourteen years shall have granted to them and their heirs for and in respect of every such child to be transported as aforesaid twenty-five acres of land within our said Province to be holden of some Mannor of his Lordships within the said Province as aforesaid under the yearly rent of sixpence sterling for every twenty-five acres to be paid as aforesaid.

Item—Every person whatsoever that shall claim any proportion of land in the said Province of Maryland by virtue of the conditions aforesaid, shall pass a grant of the said land so due to him, her or them as aforesaid, under the Seal of the Province aforesaid within one year next after the said Lands shall be due unto them and assigned and set forth in some part of the said Province by his Lordship's Lieutenant General there or in default thereof they shall by virtue of these conditions lose their rights unto the said Lands forever.

A particular of such arms and ammunition as are intended and required by the Conditions abovesaid, to be provided and carried into the said province of Maryland for every man between the ages of sixteen and fifty years which shall be transported thither.

Imprimis—One Musket or Bastard-Musket with a snaphance Lock.

Item—Ten pound of Powder.

Item—Fourty pound of lead-Bullets, Pistoll and Goose Shot, each sort some.

Item—One Sword and Belt.

Item—One Bandelier and Flask.

Dated at London tenth day of November 1641.

C. BALTIMORE.

Council Proceedings, 1st Book, folio 81.

Extract of a Proclamation, dated April 2, 1643.

" By the Lieutenant-General,

" Whereas the Lord Proprietary is given to understand " that divers adventurers into this Province have a long " time forborne to take Grants from his Lordship of Lands " due to them by Conditions of Plantation or special Warrant " contrary to the true intent and meaning of the said Conditi- " ons and Warrants which course must needs in process " of time make such adventurers' rights and pretences to " land very doubtful and his Lordship thereby also receives " great prejudice in his rents it is his Lordship's pleasure " that all persons pretending any right unto any lands with- " in this Province by virtue of any former Conditions of " Plantation or special Warrant, shall within twelve months " from and after the date hereof come and make appear unto " me their right so pretended, and take out Grants of the " same, upon pain of being refused Grants after the said " time, and hereof I require all persons whom it shall con- " cern to take notice of it at their peril."

Council Proceedings—1st Book, folio 98.

Extract of Instructions from the Proprietary, to Giles Brent Esq. Lieutenant General (deputed by Leonard Calvert Esq. who had gone to England) and to the Secretary and Council—dated the 14th July, 1643.

" And because I intend by the Grace of God to come in " person myself into the said Province at or before January " next after the date hereof I thought fit also for divers rea- " sons to suspend the granting of any more lands within that " Province till my arrival there when I shall take order to " grant to every one their due who have any just right or " claim from me of any lands within that Province and " therefore I do hereby also restrain and revoke that power " of granting of any lands in my name by him the said Giles " Brent under my great Seal for the said Province and do

" hereby require him the said Giles Brent not to grant any " accordingly without further order therein under mine " or my heirs hand and seal any thing contained in the " Commission above-mentioned dated 18th November 1641 " or in any other Commission whatsoever to the contrary in " any wise notwithstanding."

Council Proceedings—1st. Book, folio 107.

This prohibition was revoked and lands permitted to be granted as usual by a letter from the Proprietary dated the 18th of November following. The Proprietary did not come into the Province as he had proposed.

" *A Commission annexed to the Conditions of Plantation Anno* 1648.

" Cecilius, &c. to our trusty and well beloved William Stone Esquire, our Lieutenant of our province of Maryland, Greeting Whereas we have thought fit for divers reasons to revoke our former Conditions of Plantation for our said Province of Maryland and to propose other Conditions of Plantation for the future within the said Province which we send you herewith written in parchment under our hand and greater seal at arms bearing date the twentieth day of June last past and hereunto annexed, and Whereas we have likewise herewith sent you certain draughts or forms of Grants the one of a Manor and the other of a Freehold under our hand and greater seal at arms bearing date with these presents and have hereunto also annexed, which forms we would have observed and no other, mutatis mutandis et repletis replendis, in the granting of lands within the said province for the future by virtue of the said last Conditions of Plantation bearing date as aforesaid or by virtue of any other warrant hereafter under our hand and seal at arms for granting of lands there excepting where we shall by any such warrant give directions to the contrary. We do therefore declare hereby that we have and do hereby revoke from henceforward all former Conditions of Plantation for our said Province of Maryland heretofore proposed by us so as we will not have any land in our said province hereafter granted from us to any person whatsoever by virtue of any of the said former Conditions of Plantation for or in respect of the transportation of any person or persons whatsoever into our said Province from and after the date hereof and we do will and require you to publish this our declaration in our said Province with all convenient speed to the end that all those whom it may concern may

take notice thereof and We do hereby authorize and require you till we or our heirs shall signify our or their pleasure to the contrray from time to time in our name and under our great seal of our said province to grant lands within our said Province to all adventurers or planters to or within the same upon such terms and conditions as are expressed in the last conditions of plantation and according to the form of grants above mentioned and no otherwise without further and special Warrant hereafter to be obtained for the same under our or our heirs hand and seal at arms: And Whereas we are given to understand that as well divers Frenchmen as some people of other nations who by our former and also by these last Conditions of Plantation are not capable of having any Lands within our said Province are already seated or may hereafter with ours or you our Lieutenant's leave there for the time being seat themselves in our said Province We do hereby therefore authorise you to make any person or persons of French, Dutch or Italian discent as you shall think fit and who are already planted or shall hereafter come and plant in our said province capable of our said last conditions of plantation and do hereby give you power to Grant, Lands thereupon within our said Province unto them and every of them accordingly as well for and in respect of themselves as for and in respect of any person or persons either of British or Irish or of any other of the discents aforesaid which they or any of them and also which any other person of British or Irish discent shall hereafter with our or you our said Lieutenant's leave transport into our said Province in the same and in as ample manner and upon the same terms and provisoes as you are hereby or by our commission to you for the Government of the said Province authorised to grant any lands to any adventuror or planter of British or Irish discent within our said province, *Provided always* the Demesnes of no Mannor within our said Province which already is or shall be hereafter set out and appointed for our own particular use nor any part of our Mannor of West St. Marys lying upon or near St. Georges river in our said province nor any other land within our said province which hath been or shall hereafter be granted to any other person or persons from us and is or shall be confiscated or escheated again unto us or our heirs shall be alienated or granted from us or our heirs by virtue hereof without our further and special warrant for the same to be hereafter obtained under the hand and seal at arms of us or our heirs any thing herein to the contrary notwithstanding. Given at Bath under our hand and greater seal at arms the twentieth day of August Anno Domini 1648.

Conditions propounded by the Right Hon'ble Cecilius Lord Baron of Baltimore Lord and Proprietary of the Province of Maryland &c. to such persons as shall go to plant in the Province aforesaid which Conditions are to continue in force till other Conditions of Plantation for the said Province shall be published under his Lordship or his heirs hand and seal at arms within the said Province.

What persons soever being of British or Irish discent (except hereafter excepted) shall at his own or friends charge cause to be transported into the Province of Maryland from any other place himself or his deputy with any number of persons of the discent aforesaid and shall observe the Conditions hereunder mentioned there shall be granted unto every such adventuror or planter for every twenty persons of the discent aforesaid which he shall so in any one year at his own or his friends charge cause to be transported from any other place thither a proportion of good land within the said Province containing in quantity two thousand acres of English measure to be assigned and to lye all together in some one place within the said Province every which said two thousand acres shall be erected into a Mannor and be conveyed by grant under the great seal of the said Province to him his heirs and assigns respectively forever with such royalties and priviledges as are most usually belonging unto Mannors in England to be held by some honour of his said Lordship or his heirs within his said Province in socage tenure rendering and paying yearly for the first seven years after the said grant unto his said Lordship and his heirs for every such Mannor at the two most usual feasts of the year (viz.) the Annunciation of the Blessed Virgin Mary and St. Michael the Archangell by even and eaquall portions of the rent of forty shillings sterling in silver or gold, or the value thereof in such commodities as his said Lordship and his heirs or his or their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof forty Bushell of Wheat yearly as is now usually growing and used in England and according to English measure or six pounds sterling in Silver or Gold at the choice of his Lordship and his heirs and after the said fourteen years in lieu thereof the twentieth part yearly of the annual yield and profitts of such mannor or in lieu thereof ten pounds sterling in silver or gold at the choice as aforsesaid of his said Lordship and his heirs forever.

2. The sixth part of the land of every Mannor which shall be granted by virtue of the said Conditions shall be for ever after accompted and known for the demesnes of every of the said Mannors respectively which demesnes shall be set forth

in some one convenient place alltogether within every such Mannor by distinct meetes and bounds for that purpose and shall never be alienated separated or leased from the Royalties and Lord or Lords of the said respective Mannors from time to time for the time being for any number of years or other term exceeding seven years and the respective Lords of every such Mannor and their heirs shall have power from time to time and at all times hereafter to grant or convey any other part of the said Mannor respectively (except the demesne land of the same) unto any other person or persons of British or Irish discent either in fee simple or fee tayle for life lives or years to hold of him or them as of his or their said mannor respectively by and under such rents and services as he and they shall think fit not prejudicial to his Lordship's Royal Jurisdiction there and so as all and every part of the said lands so to be granted or conveyed as aforesaid remain notwithstanding still subject and liable to the payment of such rents dues and services of every such mannor as are or shall be from time to time reserved upon the original grant thereof from his said Lordship and payable to his said Lordship and his heirs forever.

3. What person soever of the discent aforesaid (except hereafter excepted) shall at his or his friend's charges cause to be transported any less or greater number of persons than twenty of the discent aforesaid into the said Province from any other place and shall also observe the conditions hereunder mentioned he shall have granted unto him his heirs and assigns respectively under the great seal of the said Province for and in respect of himself and every such person as aforesaid fifty acres of Good Land lying together in one place within the said Province to be holden of some mannor there of his Lordship's and his heirs in socage tenure rendering and paying yearly for every fifty acres to his said Lordship and his heirs for the first seven years after the grant thereof the rent of one shilling sterling in silver yearly at the two most usual feasts of the year (viz.) at the Annuncition of the Blessed Virgin Mary and St. Michaell the Archangel by even and equal portions or the value thereof in such commodities as his said Lordship and his heirs, or his and their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof and for the next fourteen years in lieu thereof one Bushel of such good Wheat as is now usually growing and used in England or three shillings sterling in silver at the feast aforesaid by even and equal portions yearly at the choice from time to time of his said Lordship and his heirs or his or their officer or officers who shall be authorised by him or them from time to time to collect or receive the same and after the

said fourteen years in lieu thereof the twentieth part of the annual yield and profits of every the said fifty acres yearly or in lieu thereof twenty shillings sterling in Silver or Gold yearly at the feast aforesaid and at the choice aforesaid to his said Lordship and his heirs forever.

4. Every adventuror or planter his heirs and assigns shall cause so many persons of British or Irish discent from time to time to reside or inhabit upon the land granted to him or them in the said Province as are required by the said Conditions to be transported thither for the granting of the said land and in default thereof at any time upon a warning given unto him or them by such officers of his said Lordship or his heirs as shall from time to time be appointed for that purpose for supply of the same such adventuror or planter and his heirs and assigns shall within one year after such warning given supply the number of persons that shall be so wanting to reside and inhabit upon the same or in default thereof to pay unto his said Lordship and his heirs two Bushels of good Wheat yearly such as usually grows in England for default of every such person so wanting till such adventuror or planter and his heirs and assigns shall comply with this article of these Conditions according to the true intent thereof and if the said default continue for three years together then for every man that shall be so wanting as afore said toinhabit and reside upon the said land it shall be lawful for his said Lordship and his heirs to seize upon fifty acres of the said land whereon there shall be at the time of such seizure no person of British or Irish discent then residing or inhabiting and let the same to any other person for any term not exceeding three lives or one and twenty years upon such terms and conditions and under such rents and services as his said Lordship and his heirs shall think fit paying such adventuror or planter and his heirs and assigns a tenth part of the rent that shall be paid by any such Lessee for the same over and above the quit rent to his said Lordship and his heirs reserved upon the originall grant which shall be first deducted and payed.

5. Every man servant of British or Irish discent that shall be transported into the said province at the cost and charges of any other person or persons whatsoever of the same discent shall at the expiration of the time of their service so as it be not under three years after their arrival there be accompted a planter within the said province and shall have so much land granted unto him his heirs and assigns therefrom his said Lordship and his heirs and upon such terms and conditions as if such servant had transported himself into the said province at his own proper cost and charges.

6. It is not intended that any adventuror or planter shall have any land granted unto him or them, for any person for or in respect of whom any land in the said Province at the time of such grant hath been formerly granted by his said Lordship.

7. Every adventuror or planter that shall have any land granted unto him by virtue of these conditions, before any grant be delivered to him and before it shall enure to his benefit shall take within the said Province the oath of fidelity to his Lordship and his heirs Lord and Proprietarys of the said province hereunto specified—

8thly Every adventuror or planter that shall have any lands by virtue of these conditions shall pay such fees to his Lordship's officers within the said Province for their respective grants of the said land as are or have been usually paid to the like officers in Virginia for the like grants in that colony or as have been paid for the like in Maryland or as is or shall be appointed by act of a General Assembly there, so as they be not less than the said fees usually paid in Virginia or which have been paid for the like in Maryland.

9. Every adventuror or planter shall have all such lands as shall become due unto him by virtue of the said Conditions assigned unto him in such parts or places of the said Province as his Lordship or his heirs or his or their Lieutenant or other chief Governor there together with his Lordships Secretary and Surveyor General there for the time being shall from time to time appoint for the general good of his Lordship's colony there and the reasonable convenience and commodity of every such adventuror or planter.

10. His Lordship doth except out of these Conditions of Plantation all Corporations Societies Fraternities Guilds and Bodys Politick, as well spiritual as temporal, and every of them and do declare that he doth not intend that they or any of them shall be capable of or have any benefit by virtue of those conditions to inherit possess or enjoy any land within the said Province, either in their own name or right or in the name or names or right of any other person or persons whatsoever to the use interest or benefit of any such Corporation Guild, Bodys Politick, Societies, Fraternities, or any of them as aforesaid without further particular and special license first had and obtained therefore under his Lordship's hand and seal at arms.

11. In case his Lordship shall think fit to except any other person or persons from having any land within the said Province by virtue of these Conditions, and shall cause notice to be given to such person or persons of such exception ; such person and persons so to be excepted by his Lordship, shall

not from and after six months next ensuing after such notice given as aforesaid have any future benefit to be capable of having any land within the said Province by virtue of the said conditions for or in respect of any person or persons which shall be afterwards transported into the said Province without further special license under his Lordship's hand and seal at arms for the same.

12. No adventuror or planter to or in the said Province or any of them, who shall have any land due unto them, him or her there by virtue of the said Conditions nor their heirs or assigns shall give grant sell aliene or assign any of those lands tenements, hereditaments within the said Province which shall be assigned or granted unto him or them from his said Lordship or his heirs, or which such adventuror or planter or any of them shall possess and enjoy by virtue of the said conditions to any Corporation, Society Fraternity, Guild or Body Politick, either spiritual or temporal, or to any other person or persons whatsoever in trust for them or any of them or to such use or uses or any use or uses comprized, mentioned or forbidden in any of the Statutes of Mortmayne, heretofore made in the kingdom of England at any time before the reign of Henry VIII. who was King of that realm without particular or special license first had and obtained for that purpose, under the hand and seal at arms of his Lordship or his heirs upon pain or forfeiture of all such lands unto his Lordship and his heirs.

13. Every person whatsoever as shall claim any proportion of land in the said Province of Maryland, by virtue of the said Conditions shall demand of his Lordship or his heirs, or of his or their Lieutenant or chief Governor of the said Province for that time being, a grant under the great seal of the said Province of the said lands so due to him within one whole year next after the said lands shall be due unto him; and if any adventuror or planter shall neglect to make the said demand within the time above mentioned or that he or his heirs or assigns shall refuse at any time to accept of a grant from his Lordship or his heirs, under the great seal of the said Province of such lands as shall from time to time be due unto any such adventuror or planter, by virtue of the said conditions when it shall be offered unto him or them by his said Lordship or his heirs, or by his or their Lieutenant or chief Governor there or by his or their Secretary within the said Province for the time being, or shall not perform all things which are required by the said Conditions to be performed by every such adventuror or planter, then every such adventuror or planter shall for ever after loose their respective rights and pretences to the said land.

14. Because all secret trusts are usually intended to deceive either the Government or State where they are made or some other persons and by experience are found to occasion many suits and dissentions, therefore no adventuror or planter shall take any grant from his Lordship under the great seal of the Province of any lands there by virtue of these Conditions in trust for any other person or persons, or to any other use or uses than what shall be expressed in the said several and respective grants upon pain of forfeiture of the said lands to his Lordship or his heirs when any such secret trust or uses shall be truly discovered.

Extract of a Commission to William Stone as Lieutenant-Governor, dated the 17th August 1648.

" And we do further hereby grant full power and authority unto him our said Lieutenant for us and in our " name to pass and grant under our said great seal to such " person or persons such proportions and quantities of land " within our said province for such estate and interest and " with such priviledges and immunities as we shall from time " to time give him our said Lieutenant Warrant for under our " hand and seal at arms and not otherwise, all which Grants to " be made passed or granted after the same Grants and the said " Warrants under our hand and seal at arms for the passing " thereof, shall be recorded or registered by our Secretary " of our said Province for the time being and after that " our said Secretary shall have certified under his hand upon the back side of every such Grant that the said Grant " and the said Warrant under our hand and seal at arms " for the passing thereof are recorded and registered and " that the Grantee or Grantees have performed our last Conditions of Plantation dated the (*a*) 20th day of June last past " if the Grant be passed by virtue thereof concerning the " transportation of so many persons into our said Province " as is required by the said Conditions for such a Grant and " also have taken the oath of fidelity to us and our heirs " Lords and Proprietaries of the said Province of Maryland " mentioned in the said last Conditions of Plantation and also " that our Surveyor-General there for the time being or his " sufficient deputy shall have likewise certified under his hand " on the back side of every such Grant that the said land " therein mentioned hath been truly surveyed and contains no " more in quantity than it ought to do by Warrant from us " and after the Grant shall be also testified by our said Lieu-

(*a*) The Conditions here meant are undoubtedly those immediately following, the Commission attached to which is dated the 20th of August—the Conditions themselves have on the record no date.

" tenant subscribing his name thereto, we do hereby declare " shall be effectual in Law and not before against us and our " heirs and shall bind us and our heirs as firmly as if Live- " ry and Seizin had been given and executed thereupon."
First Council Proceedings—folio 175.

By the Lieutenant &c. of Maryland.

" Whereas the Right Honorable the Lord Proprietary of " this Province is given to understand that divers adventu- " rors or planters have for a long time forborne neglected " or refused to take grants from his Lordship of all such " lands within this Province as have been or are due unto " them from time to time by virtue of several Conditions " of Plantation heretofore propounded by his Lordship " (contrary to the true intent and meaning of the said Con- " ditions) though some of the said lands have been due to " some of the said adventurors or planters by the space of " divers years past, which course can produce no good effects " to any such adventurors or planters or to his Lordship, " but must needs in process of time make such adventurors " rights and pretences to land there very doubtfull, begetting " nothing else but difficulties and confusions, and his Lord- " ship thereby also receives great prejudice in the non-pay- " ments of such Rents for a long time which are due and pay- " able unto him from such adventurors or planters if they " had or did take Grants of all such lands due unto them in " convenient time as they ought to have done, And whereas " there may be divers that would but could not have any " Grants passed to them for any lands due unto them since " February 1644, about which time his Lordship's great " seal of this Province was violently taken from hence and " noe other here since till now that his Lordship hath sent " a new great seal hither, his Lordship therefore doth de- " clare that it is his will and pleasure that all such persons " now resident within this Province or within the Collony of " Virginia that pretend any right to any lands which have " been due unto him her or them within this Province by " vertue of any Conditions of Plantation or any other War- " rant under his Lordships hand and seal at any time be- " fore the 17th day of March last past for which noe Grants " under his Lordship's great seal here are passed unto them, " shall some time before the first day of November next " ensueing the date hereof come and make their right appeare " unto me his Lordships Lieutenant of this Province or to " such Deputy as I shall ordaine and appoint in case of my " absence or death, for the government of this Province

" under his Lordship which they pretend to all or any such " lands here as aforesaid and after survey thereof and be- " fore the said first day of November next demand Grants " of me or such Deputy as aforesaid for the same under " his Lordships great seale of this Province before menti- " oned and thereupon they shall have Grants speedily passed " unto them according to justice, as his Lordship requires " me his said Lieutenant to performe unto him, And in " regard there may be some person or persons now absent " out of this Province and Virginia which have or pretend " to have right unto lands here due by such Conditions " or Warrant before expressed and cannot by reason of " such absence in convenient time have notice hereof, such " person or persons so absent as aforesaid shall have liber- " ty till the 25th day of March next after the date of this " Proclamation to make such their right to land within this " Province to appear and to demand Grants for the same in " manner as aforesaid, and all such person and persons be- " fore mentioned who shall neglect or refuse to comply " herewith must blame their own obstinacy if hereafter they " be refused any such Grants which his Lordship in that " case hath appointed me to refuse to grant unto them when " perhaps they would be willing to have them which his " Lordship in justice may doe, for he having once offered " them Grants and they refusing, his Lordship hath per- " formed his Conditions on his part and is wholly disobliged " in honour, justice and conscience from allowing or " offering the same againe. Given at St. Maries the 13th " day of April Anno Domini 1649.

" WILLIAM STONE."

LIB. No. 2 folio 590."

" *A Commission annexed to the Conditions of Plantation, de anno* 1649.

C. B.

" Cecilius &c. to our trusty and well-beloved our Lieutenant of our province of Maryland for the time being Greeting, Whereas we are informed that our conditions of plantation bearing date the 20th of June in the year of our Lord God 1648 and sent by us the last year to be published within our said province of Maryland are not like to give sufficient encouragement to many to adventure or plant there, we tendring more the safety and prosperity of the present inhabitants there than our own particular advantage, to the end that others may be encouraged to adventure and plant in the said province whereby the people already there may be the more strengthened against any foreign enemies we have

thought fit to revoke and do hereby revoke our former Conditions of Plantation for our said Province of Maryland and to propose other Conditions of Plantation for the future within the said Province which we send you herewith (written in parchment under our hand and greater seal at arms bearing date this present second day of July in the year of our Lord God 1649 and hereunto annexed: and Whereas we have likewise sent you herewith certain draughts of forms of Grants of a Mannor and of a Freehold under our hand and greater seal at arms and hereunto also annexed, which forms we would have observed and none other, mutatis mutandis & repletis replendis) in the granting of any lands within the said Province for the future by virtue of the said last Conditions of Plantation bearing date as aforesaid, or by virtue of any Warrant hereafter under our hand and seal at arms for granting of lands there (excepting where we shall by any such warrant give directions to the contrary) we do therefore hereby declare that we have and do hereby revoke from hence forwards all former Conditions of Plantation for our said Province of Maryland heretofore proposed by us so as we will not have any land in our said Province hereafter granted from us to any person whatsoever by virtue of the aforesaid Conditions of Plantation for or in respect of the transportation of any person or persons whatsoever into our said Province from and after the date hereof and we do will and require you to publish this our Declaration in our said Province with all convenient speed to the end that all those whom it doth or may concern may take notice thereof and we do hereby authorise and require you till we or our heirs shall signify our or their pleasure to the contrary from time to time in our name and under the great seal of the said Province of Maryland to grant lands within our said province to all adventurors or plantors to or within the same upon such terms and conditions as are expressed in the said last Conditions of Plantation bearing date with these presents and according to the forms of Grants above mentioned and no otherwise without further and special warrant hereafter to be obtained for the same under our or our heirs hand and seal at arms; And whereas we are given to understand that as well divers Frenchmen as some people of other nations who by our former and also by these last conditions of plantation are not capable of having any Lands within our said province, are already seated or may hereafter with our or you our Lieutenant's leave there for the time being seat themselves in our said Province we do hereby therefore authorise you to make any person or persons of French, Dutch or Italian discent as you shall think fit and who either are already planted or shall hereafter come

and plant in our said Province capable of our said last Conditions of Plantation and do hereby give you power to grant lands thereupon within our said Province unto them and every of them accordingly, as well for and in respect of themselves as for and in respect of any person or persons of British or Irish discent or of any of the other discents aforesaid which they or any of them and also which any other person of British or Irish discent shall hereafter with our or you our said Lieutenant's leave transport into the said province in the same and in as ample manner and upon the same terms and provisoes as you are hereby or by our Commission to you for the government of the said Province authorised to grant any lands to any adventuror or planter of British or Irish discent within our said Province: Provided always the demesnes of no Mannor within our said Province which already is or hereafter shall be set out and appointed for our own particular use nor any part of our Mannor of West Saint Mary's lying upon or near Saint Georges River in our said Province nor any other land within our said Province which hath been or shall be granted to any other person or persons from us and is or shall be confiscated or escheated again to us or our heirs, shall be alienated or granted from us or our heirs without further and special Warrant for the same to be hereafter obtained under the hand and seal at arms of us and our heirs any thing herein to the contrary in any wise notwithstanding. Given at London under our hand and greater seal at arms the second day of July in the year of our Lord God 1649.

Council Proceedings—1st. Book, folio 220.

Conditions propounded by the Right Honourable Cecilius Lord Baron of Baltimore, Lord and Proprietary of the Province of Maryland to such persons as shall go to plant in the Province aforesaid, which Conditions are to continue in force till other Conditions of Plantation for the said Province shall be published under his Lordship's or his heirs hand and seal at arms within the said province.

C. B.

Imprimis. What person soever being of British or Irish discent (except hereafter excepted) shall at his own or friends charges cause to be transported into the Province of Maryland from any other place himself or his deputy with any number of persons of the discent aforesaid and shall observe the Conditions hereunder mentioned there shall be granted to every such adventuror or planter for every thirty persons of the discent aforesaid which he shall so in any one year at his own or his friends charges cause to be transported

from any other place thither a proportion of good land within the said Province containing in quantity three thousand acres of English measure to be assigned and lye alltogether in some one place within the said Province, every of which said 3000 acres shall be erected into a Mannor and be conveyed by grant under the great seal of the said Province to him his heirs and assigns respectively forever, with such royalties and privileges as are most usually belonging to Mannors in England to be held of some Honour of his Lordships or his heirs within the said province in Socage tenure, rendering and paying therefore yearly unto his said Lordship and his heirs for every such Mannor at the two most usual feasts of the year viz the Annunciation of the Blessed Virgin Mary and Saint Michael the Archangell by even and equal portions the rent of three pounds sterling or the value thereof in such commodities as his said Lordship and his heirs or his or their officer or officers appointed by him or them from time to time to collect and receive the same shall accept in discharge thereof—

The sixth part of the land of every Mannor which shall be granted by virtue of these conditions shall be for ever after accompted and known for the demesnes of every of the said Mannors respectively which demesnes shall be set forth in some one convenient place altogether by distinct metes and bounds for that purpose, and shall never be alienated seperated or leased from the royalties and Lord or Lords of the said respective Mannors from time to time for the time being for any number of years or other term exceeding seven years, and the respective Lords of every such Mannor and his heirs shall have power from time to time and at all times hereafter to grant or convey any other part of the said Mannor respectively (except the demesne land of the same) unto any other person or persons of British or Irish discent either in fee simple or fee tail for life lives or years to be held of him or them as of his or their said Mannors respectively by and under such rents and services as he or they shall think fit not prejudicial to his Lordships royal jurisdiction here and so as all and every part of the said lands so to be granted and conveyed as aforesaid remain notwithstanding subject still and liable to the payment of such rents dues and services of every such Mannor as are or shall be from time to time reserved upon the original grant thereof from his said Lordship and payable to his said Lordship and his heirs forever.

What person soever of the discent aforesaid (except hereafter excepted) shall at his or his friends charges cause to be transported any lesser or greater number of persons than thirty of the discent aforesaid into the said province from

any other place and shall also observe the Conditions hereunder mentioned shall have granted unto him his heirs and assigns respectively under the great seal of the Province for and in respect of himself and every such person as aforesaid an hundred acres of good land lying together in one place within the said Province to be holden of some Mannor there of his said Lordships and his heirs in socage tenure rendring and paying yearly for every hundred acres to his said Lordship and his heirs the rent of two shillings sterling in silver yearly at the two most usual feasts of the year (viz.) at the Annunciation of the Blessed Virgin Mary and Saint Michael the Archangell by even and equal portions or the full value thereof in such commodities as his said Lordship and his heirs or his or their officer or officers appointed by him or them from time to time to collect or receive the same shall accept in discharge thereof.

4. It is not intended that any adventuror or planter shall have any lands granted to him or them for any person for or in respect of whom any land in the said Province at the time of such grant hath been formerly granted by his said Lordship.

5. Every adventuror or planter of or above the age of sixteen years to whom any land shall be granted by virtue of these Conditions and also every other person and persons of or above the age of sixteen years for or in respect of whom any lands shall be granted by virtue of the said Conditions before any such grant be passed unto any such adventuror or planter and before it shall enure to his benefit shall take within the said province the Oath of Fidelity to his said Lordship and his heirs Lords and Proprietarys of the said Province hereunder specified

6. Every adventuror or planter that shall have any lands by virtue of these Conditions shall pay such fees to his Lordship's officers within the said Province for their respective grant of the said lands as are or have been usually paid to the like officers in Virginia for the like grants in that Colony or as have been paid for the like in Maryland or as is or shall be appointed by act of a General Assembly there so as they be not less then the said fees usually paid in Virginia or which have been paid for the like in Maryland.

7. Every adventuror or planter shall have all such lands as shall become due to him by virtue of these Conditions assigned to him in such parts or places of the said Province as his Lordship or his heirs or his or their Lieutenant or other chief Governor there together with his Lordship's Secretary and Surveyor General there for the time being shall from time to time appoint for the general good of his Lordship's

Colony there and the reasonable convenience and commodity of every such adventuror and planter.

8. His Lordship doth except out of these Conditions of Plantation all Corporations Societies Fraternities Guilds and Bodys Politick, as well spiritual and temporal, and every of them, and doth declare that he doth not intend that they or any of them shall be capable of or have any benefit by virtue of these Conditions to inherit possess or enjoy any land within the said Province either in their own name or right or in the name or names or right of any other person or persons whatsoever to the use interest or benefit of, or in trust for, any such Corporation, Guild, Bodys Politick, Societies or Fraternities or any of them as aforesaid without further particular and especial license first had and obtained therefore under his Lordship's hand and seal at arms

9. In case his Lordship shall think fit to except any other person or persons from having any land within the said Province by virtue of these Conditions and shall cause notice to be given to such person or persons of such exceptions such person or persons so to be excepted by his said Lordship shall not from and after six months next ensuing after such notice given as aforesaid have any future benefit or be capable of having any land within the said Province by virtue of these Conditions for or in respect of any person or persons which shall be transported into the said Province without further especial license under his Lordships hand and seal at arms for the same

10. No adventuror or planter to or in the said Province or any of them who shall have any lands due unto him her or them by virtue of these Conditions nor their heirs nor assigns shall give grant sell alien or assign any of those lands tenements or hereditaments within the said Province (which shall be assigned or granted unto him or them from his said Lordship or his heirs or which such adventurors or planters or any of them shall possess and enjoy by virtue of these Conditions) to any Corporation, Society, Fraternity, Guild, or Body politick either spiritual or temporal, or to any other person or persons in trust for them or any of them or to such use or uses or to any use or uses comprized mentioned or forbidden in any of the Statutes of Mortmayne heretofore made in the Kingdom of England at any time before the reign of Henry the VIII. who was King of that Realm, without particular and especial license first had and obtained for that purpose under the hand and the seal at arms of his Lordship or his heirs upon pain of forfeiture of all such lands to his said Lordship and his heirs

11. Every person whatsoever that shall claim any proportion of land in the said Province of Maryland by virtue of

these Conditions shall demand of his Lordship or his heirs or of his or their Lieutenant or chief Governor of the said province for the time being a grant under the great seal of the said Province for the lands so due to him within one year next after the said lands shall be due unto him and if any adventuror or planter shall neglect to make the said demand within the time abovementioned or that he or his heirs or assigns shall refuse at any time to accept of a grant from his Lordship or his heirs under the great seal of the said Province of such lands as shall be from time to time due to any such adventuror or planter by virtue of these Conditions when it shall be offered unto him or them by his said Lordship or his heirs or by his or their Lieutenant or chief Governor there or by his or their Secretary within the said Province for the time being or shall not perform all things which are required by these Conditions to be performed by every such adventuror or planter then every such adventuror or planter shall for ever after loose their respective rights and pretences to the said land

Because all secrett trusts are usually intended to deceive either the Government and State where they are made or some other persons and by experience are found to occasion many suits and dissentions therefore no adventuror or planter shall take any grant from his Lordship under the great seal of the said province of any lands there by virtue of these Conditions in trust for any other person or persons or to any other use or uses then what shall be expressed in the said several and respective grants upon pain of forfeiture of the said lands unto his Lordship and his heirs when any such secrett trust or uses shall be truly discovered.

Given at London under his Lordships hand and greater seal at arms the second day of July 1649.

COUNCIL PROCEEDINGS, First Book fol. 220.

" BY THE LIEUTENANT, &c. OF MARYLAND.

PROCLAMATION.

" Whereas by Proclamation dated the thirteenth day of April last, and published within this Province, for the reasons therein expressed it was on the behalf of the Right Honorable the Lord Proprietary of this province and by his direction declared that it was his Lordship's will and pleasure that all such persons then resident within this province or the Colony of Virginia, that pretended any right to any lands which have been due unto them or any of them within this Province by virtue of any Conditions of Plantation or other Warrant under his Lordship's hand and seal at any time be-

fore the 17th day of March last past, for which no grants under his Lordship's great seal here were passed unto them, should some time before the first day of November next come and make their right appear unto his Lordship's Lieutenant General of this Province, or to such Deputy as he shall ordain and appoint in case of his absence or death for the government of this Province under his Lordship, which they pretended to any such lands, and after survey thereof and before the said first day of November next demand grants for the same under his Lordship's new great seal of the said Province and thereupon they should have grants speedily passed to them according to justice as by the said Proclamation remaining upon record with the Secretary of this Province more at large amongst other things it doth and may appear, now for as much as I am credibly informed that divers of the inhabitants of this Province who have land due to them by virtue of former Conditions could not attend the survey thereof by the time limitted in the said Proclamation without great damage to be by them incurred by leaving their crops in the mean time which must necessarily have been very prejudicial both to themselves and the commonwealth upon consideration whereof I have thought fit and Do hereby declare that all and every such person and persons who have yet any Land due to them or any of them by virtue of any former Conditions or warrant in the said Proclamation mentioned and for which no grants under his Lordship's great seal are yet passed, shall have further time until the 25th day of March next after the date hereof to make their right appear and demand grants as by the said Proclamation is directed. Given at Saint Marys this 30th day of October Anno Dm. 1649."

THOMAS GREENE."

COUNCIL PROCEEDINGS, 1st Book. fol. 248.

" BY THE LIEUTENANT, &c. OF MARYLAND.

PROCLAMATION.

" Whereas by two several Proclamations the first bearing date the 13th day of April Anno Domini 1649 and the other the 30th of October last and published within this Province for the reasons therein expressed it was on the behalf of the Right Honourable the Lord Proprietary of this Province and by his directions declared that it was his Lordship's will and pleasure that all such persons in the said Proclamation mentioned that pretended any right to any lands which have been due unto them or any of them within this Province by virtue of any Conditions of Plantation or any other warrant

under his Lordship's hand and seal at any time before the 17th of March 1648 for which no grants under his Lordship's great seal here were passed unto them should by the times limitted in the said several Proclamations come and make their rights appear unto his Lordship's Lieutenant of this Province or to such deputy as he should ordain and appoint in case of his absence or death for the government of this Province under his Lordship which they pretended to any such lands and after survey thereof and before the said times limitted demand grants for the same under his Lordship's new great seal of this Province and thereupon they should have grants speedily passed to them according to justice as by the said Proclamations remaining upon record with the Secretary of this Province more at large (amongst other things) it doth and may appear ; NOW for that I am informed divers persons both here and in Virginia and else where who have land due to them by virtue of former Conditions upon pretence of not having notice of the said former Proclamations have not yet taken up the same, to the end therefore that no man may for the future justly pretend ignorance or other excuse for their neglect herein I have again thought fit and do hereby declare that all and every person and persons who have yet any lands due to them or any of them by virtue of any former Conditions or Warrant in the said Proclamations and herein before mentioned and for which no grants under his Lordship's great seal here are yet passed shall have further time till Michaelmas day next after the date hereof to make their right appear and demand grants as by the said Proclamations and herein before is declared, and all such person and persons are hereby required to take notice hereof peremptorily who if they neglect or refuse to comply herein are not to expect any further time than the day before limited which is to be finall and binding to all intents and purposes in the said former Proclamations mentioned. Given at St. Marys this 25th day of march anno Dm. 1650.

WILLIAM STONE."

COUNCIL PROCEEDINGS, 1st Book. fol. 249.

" BY THE LIEUTENANT AND GOVERNOUR &c. OF MARYLAND.

" According to the speciall direction and appointment of the Right Honb'le Cæcilius Lord Baron of Baltemore Lord Proprietary of this Province of Maryland in that behalf, These are in his the said Lord Proprietarys name to give notice and declare to all and every the inhabitants of this Pro-

vince and others whom it doth or may concern, That Whereas his said Lordship understands that divers persons inhabiting in this Province have not sued out their Patents in due time for the lands which they clayme to be due unto them here nor have taken the oath of fidelity (as they ought to have done) according to his Lordship's Conditions of Plantation whereby they clayme such land. Yet his Lordship out of his good affection to them is not willing to take such advantage as he justly might, thereupon against them, without giveing them first fair warning by this Proclamation of their error therein, but is contented that all such persons who clayme any land due unto them respectively by virtue of his Lordship's *Condicons* of Plantation dated the second day of July 1649 shall notwithstanding their said default have the said lands granted unto them as if no such default had been made.—Provided always that they doe respectively within three months now next ensuing take the said oath of Fidelity according to his Lordship's declaration bearing date the sixt of August 1650 and his Instructions bearing date the 17th of February 1652 and also within the said time make their rights to the said lands appear to his Lordships Secretary here, and sue out their Patents and pay to his Lordships Receiver Generall here or his sufficient Deputy all such arrears of rent as are due to his Lordship for the said lands respectively from the time such Patents ought by the said *Condicons* to have been sued out by them respectively, and also pay unto his Lordship's Officers here such fees as of right belong unto them respectively for the same. And These are further also in the Lord Propietor's name and by his speciall direction and appointment as aforesaid to declare and give notice that in case such person or persons so clayming any land due unto them as aforesaid who shall not take the said oath of fidelity or not sue out their respective Patents or not pay the said arrears and fees respectively as aforesaid within the time aforesaid, shall be for ever after debarred from any right or clayme to the said lands respectively, which (in that case) his Lordships Lieutenant here is by his said Lordship's speciall direction required to cause to be *entred* and seized upon to his Lordship's use. Given at St. Maries in the said Province of Maryland the seventh day of February Anno Dm. 1653.

WILLIAM STONE."

LIB. No. 1, folio 514.

Extract of Instructions from the Proprietary to the Governor and the Council dated the 12th November 1656.

" That his Lordship's said Lieutenant do cause such proportions of land to be surveyed and assigned (except Royal

mines) to such several persons as followeth until his Lordship shall send a new great seal thither (which he will shortly do) whereby the said lands may be granted under the same, viz.

" To his Lordships brother Philip Calvert Esq. his Secretary of the said Province of Maryland six thousand acres to be erected into one or more Manors and to be called by such name or names as his Lordship's said brother shall think fit.

To William Thompson one hundred arces

To ——— Simpson two hundred acres

To every servant that hath and shall serve out his time with any planter or adventuror there and hath and shall approve himself faithful to his Lordship fifty acres.

" Provided always that none of the lands before mentioned be assigned in any place formerly disposed of by his Lordship or his authority to any person or persons nor set out or reserved for his Lordship's own use, and provided that in the said assignments the usual respective yearly rent of one shilling sterling for every fifty acres of all the said lands, and so proportionably for any greater quantity of land to be paid to his Lordship and his heirs for the same be reserved and paid respectively or the value thereof in such commodities as his Lordship or his heirs or his or their Officer or Officers appointed from time to time to collect and receive the same shall accept in discharge thereof. And provided also that there be not above *fifty pole* of land laid out upon any *water side* of every fifty acres to be assigned as aforesaid and so proportionably for any greater quantity of land, and the residue to be laid out within the land next adjoining; which proportion, also, his Lordship wills and requires his said Lieutenant and Council to cause to be observed in surveying and setting forth all other lands claimed by any person or persons by virtue of any of his Lordship's Conditions of Plantation or any other Warrant or Order heretofore or which hereafter may be obtained from his Lordship notwithstanding particular mention be not made thereof in any such Warrant or Order; for all which this shall be his the said Lieutenant's Warrant."

COUNCIL, Book, H. H. folio 5.

" C. BALTIMORE.

" Cæcilius Absolute Lord and Proprietary of the Provinces of Maryland and Avalon Lord Baron of Baltimore &c. To our Right Trusty and well beloved our Lieutenant of our said Province of Maryland for the time being Greeting: Whereas by our Declaration heretofore made and published in our

said Province of Maryland bearing date the sixth and twentieth day of August one thousand six hundred fifty one we did among other things require and authorise our Lieutenant of the said Province for the time being for the encouragement of Adventurers and Planters to begin Plantations on the part of our said Province commonly called and known there by the name of the Eastern Shore and on the tract of land running on the north side of the River running in by Potomack Town and called in some -Mapps Potomack River including the country called the Doags to Grant to every such adventurer or planter a hundred acres of land for every person of Brittish or Irish descent which he should bring into the said Province until we should declare our further pleasure therein we do now hereby declare that no person or persons hereafter shall have more land granted or allowed unto them or any of them by us in the places before mentioned then in any other part of our said Province for or in respect of any person or persons which shall be transported into our said Province from and after the twentieth day of June next; And Wee do further will and require you that in all Grants from us of any Mannor in any part of our said Province which shall be passed hereafter for or in respect of any person or persons which shall be transported into our said Province from and after the said twentieth day of June next you cause to be reserved upon every such Grant the Rent of two shillings Sterling for every fifty acres which shall be passed by any such Grant to be paid yearly to us and our heirs for the same for ever and also that you demand and cause to be paid to our Treasurer or Receiver Generall there for our use by every such Patentee or Grantee one years rent for a fine according to the rent which shall be reserved in every such Pattent or Grant of a Mannor so to be passed as aforesaid respectively before the passing of any such, Patentt or Grant and that likewise in all Grants or Patents from us whether of Mannors or other lands in our said Province which shall be hereafter passed for or in respect of any person or persons which shall be transported into our said Province from and after the said twentieth day of June you cause to be reserved upon every such Grant or Patent one years rent for a fine to be paid upon every alienation of the Mannors or land so to be granted respectively. And to that end to insert a Proviso in the said respective Grants that no such tennant shall alien any such Mannor or land or any part thereof without entring every such alienation respectively in the Records of the Provinciall Court there or of the County Court where any such Mannor or land shall happen to lye within one month at the furthest next after every such allienation respectively And also to pay the said fine as afosesaid before the said alienation or else

the alienation to be void; and we require you to proceed in all the before mentioned premisses according to this our declaration any thing contained in our said former declaration or Conditions of Plantation or in any instructions or other Warrant heretofore from us to the contrary hereof in any wise notwithstanding, but in all other things our will is that our last Conditions of Plantation shall remain in force until we or our heirs shall signyfie our or their pleasure to the contrary. Provided always that all such Warrants or Instructions for the granting of any Mannors or lands in our said Province as we have given or granted to any person or persons before the date hereof wherein we have allowed any further time then the said twentieth of June for the transporting of any people into our said Province for and in consideration or in respect of the granting of any Mannor or land mentioned in any such Warrant shall not be any way impeached by this our declaration but shall stand in as much force and be observed and performed according to the tenor and true intention of every such Warrant or instruction respectively as if this present instrument had not been made, any thing herein contained to the contrary thereof in any wise notwithstanding: and this our declaration we will and require you to cause to be published after the usual manner in our said Province with all convenient expedition after your receipt hereof. Given under our hand and greater seal at arms the two and twentieth day of September in the seven and twentieth year of our Dominion over the said Province of Maryland and in the year of our Lord God one thousand six hundred fifty and eight."

LIB. Q. folio 478.

"*A Declaration by the Lord Proprietary of Maryland.*

"Whereas by our declaration of the 22d of September 1658 directed to our then Lieutenant of Maryland Wee did require that in all grants from us of Mannors there for persons transported thither after the 20th of June 1659 there should be reserved to us and our heirs a rent of two shillings yearly for every fifty acres, and one years rent for a fine, and that in all grants of land for persons transported after the said 20th day of June there should be reserved one year's rent for a fine to be paid upon every alienation of any such land and to that end and proviso should bee put into every grant that noe tenant should alien any part of the land granted without entring it one month after in the Provinciall or County Court there and that hee should pay the said fine before the said alienation, or else the alienation to bee void; And

that our said Declaration should be published there with all convenient speed, which we do not *here* is yet done, and it it be not wee have reason to take in ill parte the neglect of those our orders ; Wee Doe hereby renew them, and recommend them strictly to the care of our Lieutenant there for the *tyme* beinge to see them put in due execution. And Wee Doe further add and appoint that in all grants whatsoever from us for the future of any land there for or in respect of any person or persons which shall bee transported thither after the 20th day of June next there shall bee reserved to us and our heirs the rent of two shillings sterling yearly for every fifty acres, and that this our declaration bee forthwith published there for that purpose by our Lieutenant or Commissioners for the Government there for the tyme beeinge. Given under our hand and lesser seale at armes this 4th day of October in 29th yeare of Dominion over Maryland and in the yeare of our Lord God 1660."

COUNCIL, Book H. H. fol. 148.

" *Att a Councel held att St. Maryes the 24th day of June Anno Domini* 1667.

" Whereas the Governour and Councell are informed that there are severall persons that are seated within this Province on the seaboard side and doe pretend to be under the Government of New-Yorke Itt is therefore ordered that a special warrant be granted to Mr. William Stevens for eight thousand acres of land to be proportioned out by him for the encouragement of such as will seat there on the said seaboard side, and that such persons as seat there shall have seven years liberty to make good rights for the said land, paying to his Lordship only the rent of two shillings sterling yearly for every hundred acres And further itt is ordered that those that seat nearest the Hoarkill shall have out of the said eight thousand acres one thousand acres of land for a ffamily, having in itt three working hands att the least And the rest of the eight thousand acres to be proportioned out att five hundred acres each ffamily haveing in itt two working hands att the least ; Provided such as intend to seat there shall settle betwixt this tyme and the last of November next and there build and not desert their plantations And itt is further ordered, that att the returne of Colonel Henry Coursey from New-Yorke a letter to be sent to the Governour of New-Yorke to know whether those persons who have incroached upon his Lordship's Province doe own him for their Governour that there may be a right understanding betwixt the two Governments."

LIB. R. R. fol. 122.

" *Extract from Instructions from the Proprietary (Cecilius) to the Governour Charles Calvert, dated 28th July* 1669.

" ART. 2. That according to his Lordship's former directions no land be granted hereafter from his Lordship in his said Province for a less rent than two shillings sterling yearly for every fifty acres, and that special care be taken that the Surveyor General do speedily set out ten thousand acres of the best Land up in the freshes of Potomack River for his Lordship's use and also that no incroachments be made by any other persons upon any lands already reserved or that shall hereafter be reserved for his Lordship, as also that no lands whatsoever formerly granted and since escheated or forfeited to his Lordship be granted away upon rights of Plantation or otherwise without special Warrant under his Lordship's hand and seal.

3. That you use all means possible to procure that some persons be seated upon the seaboard side on the Eastern Shore and on Delaware Bay within the degree forty northerly Latitude, and particularly the Whorekill, and for the encouragement of planting in those parts it is his Lordship's pleasure that lands be granted there to such persons, at the rent of one shilling sterling yearly for every fifty acres according to the former Conditions of Plantation, and if any shall presume to oppose you in it you are to maintain his Lordship's right by force if need be which his Lordship will justify you in; it is likewise his Lordship's further pleasure that the Surveyor General do set out for his Lordship at the Whorekill and Seaboard side of the Eastern Shore of the best land and in the most convenient places to be found in those parts two Manors in every County each Manor containing six thousand acres at the least."

COUNCIL PROCEEDINGS, C. B. folio 7.

(Seale.) " *Instructions from the right Hon'ble Cecilius absolute Lord and Proprietary of Maryland and Avalon, Lord Baltimore, &c.*

" To his dear son Charles Calvert his Lordship's Lieutenant of the Province of Maryland and in his absence to his Deputy or Deputies for the government of the said Province.

" 1st. That whereas his Lordship by his instructions of the 28th day of July 1669 did order that no land should be granted thereafter from his Lordship in his said Province of Maryland by virtue of any former Conditions of Plantation for or in respect of any person or persons transported into his said Province under a lesser rent than two shillings ster-

ling per annum to be reserved due and payable to his Lordship his heirs and successors Lords and Proprietaries of the said Province for every fifty acres of land excepting only on the sea board side on the Eastern Shore and on Delaware Bay within the 40th degree northerly Latitude and particularly at the Whorekill in which places so excepted as aforesaid his Lordship's pleasure was and is that lands be granted at the yearly rent of one shilling sterling per annum for every fifty acres to be reserved due and payable as aforesaid according to the Conditions of Plantation before the said instructions, his Lordship doth now declare order and authorize you to pass in his name under his great seal there such grants of land as were due to any person or persons being transported into his said Province before the said 28th day of July 1669 at the former yearly rent of one shilling sterling for every fifty acres according to his Lordship's former Conditions of Plantation any thing in the said instructions of the said 28th day of July notwithstanding but as to the appointting of land there for and in respect of any person or persons that have been or shall be transported into his said Province since the said 28th day of July 1669 his Lordship's will and pleasure is that his said instructions of the said date shall be observed.

" 2ndly That you endeavour to the utmost of your power to procure that some persons be seated upon the said sea board side on the Eastern Shore and on the said Delaware Bay within the fortieth degree of northerly Latitude and particularly at the Whorekill; for the further and greater encouragement of the planting of which places his Lordship doth hereby give you power and authority to permit any person or persons of British or Irish discent who shall desire to seat themselves on any of the said places last mentioned to *take up upon credit* any quantity of lands or number of acres there not exceeding the number of three hundred acres by any one person so as every grant of such lands so to be made and granted upon credit be particular and by itself, and so as there be reserved unto his said Lordship and his heirs upon every such grant the yearly rent of one shilling sterling for every fifty acres of land so to be granted upon credit as aforesaid and also all royal mines, and so as every such grant of land so to be taken up and granted upon credit as aforesaid be made and granted upon condition to be void in case the grantee or grantees to whom the same shall be so made and granted his or their heirs or assigns respectively do not or shall not within four years to be accounted from the day of the date of such grant or grants respectively bring in or import into the said Province to reside and continue there one person of British or Irish discent for every fifty

acres so to be granted upon credit as aforesaid and make sufficient legal proof of such bringing in and importation of every such person.

" 3dly That notwithstanding any reservation made by his Lordship or his Lordship's Surveyor General for his Lordship's use of any lands on either side of Mount Scarborough in the County of Somerset within the said Province you shall forthwith make good all articles made by our dear brother Philip Calvert, Esq. on his Lordship's behalf and Colonel Edmund Scarburgh upon the laying out of the bounds between his Lordship's said Province and the Province of Virginia in relation to the granting of any lands in and by the said articles agreed to be granted to any person or persons whatsoever at the time of the making of the said articles, so as the said grants be made according to his Lordship's Conditions of Plantation before his Lordship's instructions above mentioned bearing date the 28th day of July 1669, and so as all royal mines be excepted in every such grant.

(The 4th article omitted, as concerning another subject, and the date 21st of March 1670.)

Signed C. BALTIMORE."

COUNCIL BOOK, C. B. fol. 28.

" MARYLAND *ss.*

" BY THE HONORABLE THE GOVERNOR AND COUNCIL.

" Whereas the Right Honourable Cecilius absolute Lord and Proprietary of the Provinces of Maryland and Avalon Lord Baron of Baltimore, &c. hath by his instructions bearing date at London under his hand and seal the 21st day of March 1669 commanded us to publish and declare to all people that shall have a desire to seat on the seaboard side on the Eastern Shore on Delaware Bay within the fortieth degree of northerly latitude and particularly at the Whorekill his Lordship's Conditions of Plantation to all such as shall transport themselves as aforesaid which is as followeth viz.

" Any person of British or Irish discent who shall desire to seat themselves in any of the places last mentioned shall take up there upon credit any quantity of lands or number of acres not exceeding three hundred to any one person and every such grant for such number of acres shall be particular and by itself and so as there be reserved unto his Lordship and his heirs upon every such grant the yearly rent of one shilling sterling for every fifty acres of land so to be granted as aforesaid and also all royal mines and so as every such

grant to be taken up and granted upon credit as aforesaid be made and granted upon condition to be void in case the grantee and grantees to whom the same shall so be made and granted his or their heirs or assigns respectively do not or shall not within four years to be accompted from the day of the date of such grant or grants respectively bring in or import into the said Province to reside or continue there one person of British or Irish discent for every fifty acres so to be granted upon credit as aforesaid and make sufficient proof of such bringing in and importation of every such person signed and sealed with the seal of my office by order from the hon'ble the Governor and Council this 23d of December 1670.

By me WILLIAM TALBOT Secratary."

COUNCIL BOOK, C. B. fol. 47.

(L.S.) *Instructions given by the right Hon'ble Cecilius absolute Lord and Proprietary of the Provinces of Maryland and Avalon Lord Baron of Baltimore &c. to his trusty and well beloved Nephew Baker Brooke of Maryland Esq. his Lordship's Surveyor General of the said Province of Maryland for the better execution of the Surveyor General's place there.*

Imprimis, That he make diligent enquiry of all such persons as have procured grants of lands to be passed to them without survey thereof made by his Lordship's Surveyor General or his sufficient deputy before the passing thereof and if he find any such that he certify the same to his Lordships Lieutenant there and desire his order to have such land surveyed by the Surveyor General and in case it be found that his Lordship be wronged by any such grant that he desire the said Lieutenant to certify the same.

2. *Item.* That he survey no land in the said province to be granted by his Lordship to any person or persons whatsoever but by order from time to time from his Lordship or his Lieutenant of the said Province or such as he shall appoint.

3. *Item.* That he call courts of enquiry and survey once every year in all the several counties of the said Province for which he is first to demand of his Lordship's Lieutenant an authority by a commission in his Lordships name under the great seal of the said Province to enquire and examine the rights and titles which any one claim to any lands in the said Province and whether they possess more Land than their due or whether they hold by any lawful title from his Lordship and what rents and services they ought to pay to his Lordship that he enter the same in a book and make two copies thereof one of which he is yearly to send to his Lordship and the other he is to deli-

ver to his Lordship's Receiver General there the better to inform him what rents are due to his Lordship.

4. *Item.* That he reserve for his Lordship all such places as he shall find to be convenient for the building of fortifications and fortresses for the defence of the country.

5. *Item.* That he take special care that there be not surveyed for any adventuror or planter above fifteen pole by the sides of any creek or rivers of the said Province for every fifty acres due to any such planter or adventuror by his Lordship's Conditions of Plantations or other Warrant and so respectively of greater proportions without special and express directions from his Lordship to the contrary and the rest to be laid forth up into the inland correspondent to that which each one hath respectively on the water side according to the proportion aforesaid that so conveniency of access to the water side be preserved to every planter upon each of their respective plantations for the better transportation of their goods.

6. *Item.* That the surveyor general take care that according to his Lordship's former Instructions divers Mannors in the most convenient places of the said Province that is to say two Mannors at least in each county of the said Province from time to time (as occasion shall require) be laid out for the particular use of his Lordship and his heirs and erected into Mannors every of which Mannors are to contain six thousand acres of land a piece at least and the one sixth part thereof lying all together in some one convenient place of every such Mannor respectively is to be reserved for his Lordship's demesne and the rest to be disposed of as his Lordship or his son and heir Charles Calvert Esq. shall from time to time appoint.

7. *Item.* That he take care that he do not survey or cause to be surveyed to or for any person or persons whatsoever any lands of in or belonging to his Lordship's Mannor of West St. Marys nor of any other Mannors or lands set out for his Lordship's use within the said Province withouta special Warrant from his Lordship or his son and heir Charles Calvert Esq. and their hands and seals at arms respectively.

8. *Item.* That he take care that he do not survey or cause to be surveyed for any person or persons any Mannors or lands formerly granted by his Lordship to any person or persons and which is or shall from time to time become afterwards escheated again or forfeited to his Lordship by any ways or means whatsoever unless his Lordship by especial Warrant under his hand and seal at arms give order for the granting of such respective Mannors or lands to such person or persons for whom he the said surveyor shall survey the same. Given under his Lordship's hand and lesser seal at arms the

first day of August in the fortieth year of his Lordships Dominion over Maryland in the year of our Lord God 1671.
COUNCIL BOOK, C. B. fol. 89.

CHAPTER IV.

ORIGIN OF THE LAND OFFICE ESTABLISHMENT, AND EARLY PROCEEDINGS IN LAND AFFAIRS.

ALTHOUGH it is certain that Mr. Leonard Calvert came out originally with some authority by Commission from the Proprietary for the government of the proposed Colony, and though some of the first adventurers were designated as his immediate (*a*) assistants in that task, the records now in being afford no evidence of any formal establishments until three or four years had elapsed from the time of the first emigration. A complete provision for the management of public affairs seems to have been aimed at soon after the publication of the Conditions of Plantation of 1636. Our present enquiry, however, must be confined to those offices or establishments which were charged with the management of *Land* affairs. The promises to the first adventurers could not, of course, be realized until lands were procured, and might be explored and surveyed with safety. When this period arrived, it became necessary to settle the manner in which the persons demanding grants of land should exhibit and substantiate their claims, and also to provide for the locating, surveying, and bounding the several quantities of land so claimed, with the methods of authenticating the surveys, and of passing complete titles by grant or Letters Patent under the great seal of the Province. The document first to be noticed as having relation to this subject is the Commission of Mr. Leonard Calvert as Lieutenant General or Governor of the Province, dated the 15th day of April 1637. Among other powers and trusts not connected with the objects of our enquiry, the Governor was by this Commission made Keeper of the great seal, with power, in the proprietary's name, to pass and grant under the said seal *such quantities of land*,

(*a*) It appears by a grant to Thomas Cornwalleys Esq. of the Manor of West St. Mary's in 1640, (Liber No. 1, fol. 97) that the land so granted was part of 4000 acres for which Capt. Henry Fleete had agreed with the *Governor and Commissioners* of Maryland in the year 1634, the second year of the Colony. This is the only evidence which I have found of the original Commission for commencing the settlement of Maryland, but it is sufficient.

and to such person or persons, for such estate and interest, and with such privileges and immunities, as he already had or should thereafter have Warrant for from the Proprietary under his hand and seal; which grants so to be made and passed, were directed to be enrolled by the Secretary of the Province for the time being, as well as the Warrants under which they were passed, and were declared to be effectual in law, and binding on the Proprietary and his heirs after such enrollment, and not before. By the same Commission three persons, to wit Jerome Hawley, Thomas Cornwallis, and John Lewger were appointed a Council to the Governor, and the last mentioned Gentleman appointed, also, Secretary and Keeper of the acts and proceedings of the Governor (or Lieutenant) and Council for the time being, and for the *doeing* (i. e. making out) and *recording of all grants of land* or of offices within the Province, as well as for recording generally all matters of a nature to require it.

The next establishment that claims our notice is that of Surveyor General, to which office John Lankford was appointed on the 24th of March 1641. This officer does not seem to have been a mere surveyor or director of the Surveys of *land*, although it has been generally under the authority of a Surveyor General similarly commissioned that lands have been laid out by the Deputy Surveyors under the Proprietary Government. But he was by this Commission constituted Surveyor General of all and singular the Castles, Lordships, Manors, Forests, Chases, Parks, Messuages, Tenements, *Lands*, Woods, Rents, Revenues, Possessions, and Hereditaments whatsoever of his Lordship, his heirs and assigns within the Province of Maryland; to hold the said office by himself or sufficient Deputy or Deputies *during his* (*b*) *natural life*. No Commissions of a very early date to Deputy Surveyors are to be found, and it is presumable that they acted under any kind of Warrant or private appointment that the Surveyor General thought proper to give.—Examples of Commissions in a regular form occur about the year 1674, as will hereafter appear.

The Secretary's office being opened, the persons entitled to land, under the first or later Conditions of Plantation, resorted thither to procure entries on record of their respective rights, and, either at the same or at a subsequent time, to demand Warrants of survey for the correspondent quantities of land, which were issued by the Governor, or by the Secretary under his direction. Besides the *demands* made under Conditions of Plantation, many were grounded on speci

(*b*) This is the only instance on record of an Office held for life. The Proprietary's Commissions were generally *during his pleasure*.

al Warrants granted by the Proprietary himself in England, under such particular terms and conditions as he thought proper to impose. The claims, being thus admitted on record, stood as it were to the credit of the parties until they saw occasion to use or to assign them. When Warrant was obtained it barred provisionally such, or so many rights of the party as were necessary to cover it. The Warrants were signed by the Governor and directed to the Surveyor General, who, after their execution by himself or his deputies, returned Certificates of the surveys, under his signature, to the Secretary's office, but addressed, according to the style then in use, " to the *Lieutenant General*," after which, no objection, appearing, (*c*) *grants* or *patents* were issued conformably thereto under the great seal, signed by the Governor, and endorsed by the Secretary and Surveyor General agreeably to the instructions on that head which have already been inserted. The title was then complete and the rights on which it was founded were satisfied and cancelled. In order to shew more clearly the nature of those proceedings, which form the ground work of landed estates in Maryland, and of that system which is the professed subject of our enquiry, it is thought well to give in this place some extracts from the earliest land records, in which will be seen the original forms of Warrants, Certificates, and Patents, with their general properties and relation. It is not intended however, in this place, to go into a particular explanation of the nature and operation of those several instruments, for which reason the examples are not presented in any studied order, but, chiefly in the accidental succesion in which they are found on record.

(*d*) Came into the Province the 8th of August 1637, Mr. Thomas Copley and Mr. John Knolls who transported R H. L G, W K, &c.

Richard Garnett, senior, who transported his wife, Richard Garnett his son, ——— maid servant.

(*c*) These terms are used indifferently to express a donation or other free investiture of lands or tenements (not to mention offices, privileges &c.) made under the public seal of a Kingdom, State or other acknowledged power. The word *Grant* requires no explanation. The appellation of *Patent* is an abbreviation (using the adjective as a substantive) of *Letters Patent*, by which is meant a Writing *open* or *public*, as being attested by the public seal. The only difference between the two is that the term *Grant* is by custom often applied to the thing granted, while the name of a *Patent* is almost always used to express the Instrument or evidence of the Grant.

(*d*) There are some entries preceeding these, but by means of chasms they are rather unintelligible; these have been occasioned by damage sustained by the original records before they were transcribed into the book from which the entries are here taken.

Came into the Province 28th November 1637 in the ship called the Unity of the Isle of Wight—Mr. John Lewger, who transported his wife, his son John aged 9 years, Martha W, Ann P, and Mary W, maid servants, Benj. C, Philip L, Thomas F, and a boy Robert S —— aged 12 years.

Robert C. servant to Mr. Copley who transported ——.

Mr. Jerome Hawley, Esq. who (*e*) transported Mary and Ellen Jermegan, Gent. Thomas Jermegan and Thomas Cullamore.

Capt. Cornwaley's bought out of the ship Charles M, (*f*) Stephen G, Alice M——.

Thomas Franklin, bought out of the ship William, T— a boy.

Came into the Province 22d November 1638, Mr. Giles Brent and Mr. Fulke Brent his brother, who returned in March following; Mrs. Margaret Brent, Mrs. Mary Brent who transported Mary T, E G &c. maid servants—John R—, —— G Blacksmith.

Transported at the charge of the Viscountesse Falkland Joane B——, maid servant, Barnaby J, &c.

Came into the Province 12th January 1637, Captain Robert Wintour who transported Richard B, A W, J S, B P, T W——G T a boy aged 15 years.

Mr. William Britton, who transported himself and his wife and William N aged near sixty years, —— the wife of the said N. aged likewise, William his son aged four years; James P &c.

Came into the Province in April 1638, Marmaduke Snow, Thomas Gerrard, Surgeon.

Came into the Province in October 1638, Balteaser Codd an (*g*) Irishman.

—

The foregoing will serve as a specimen of the simple entry of arrivals in the Province, made it is believed at the in-

(*e*) This word is not used here in the sense sometimes attached to it, but in its simple and original meaning; that of bringing or carrying over or across from one place to another.

(*f*) It would for obvious reasons be invidious and unpleasant to give the names at large of persons who came into the Province in servile or dependent stations—but as some notice of those persons was necessary in order to shew the entries in their real form, I have done it by initials.

(*g*) This quaint distinction is noticed only to shew what matters were thought fit to be stated on record. The reader will have observed that the Conditions of Plantation speak of persons of *British* or *Irish* descent, Natives of Scotland were included under the first of these terms as the *Union* had taken place in the preceeding reign; but although those of *Wales* were British by a more ancient title, I find an emigrant distinguished by the appellation of *John the Welchman.*

stance of the parties, as the foundation of more formal entries and applications of the Land Rights thereon arising—among the following will be found some of this description.

—

Entered by Captain George Evelin for the Manor of Evelinton in the Baronie of St. Maries, Thomas H, David W, Randall R &c. to the number of 23.

Entered by John Lewger, Secretary, brought into the Province in the year 1637, John Lewger, senior, Ann his wife, John Lewger, Jun. aged 9 years—M W, A P, M W maid servants Benjamin C &c. the same persons mentioned in the entry of arrivals, and others to the number of 22.

Entered by Mr. Copley, brought into the Province in the year 1633, Mr. Andrew White, Mr. John Althem, &c. Thomas H &c. to the number of 30.

Brought into the Province in the year 1637, Mr. Thomas Copley, Mr. John Knoles Robert K &c. to the number of 19.

—

These are supposed to be conclusive admissions on record of the claims of the parties making the entries to quantities of land proportionate to the number of persons brought in by them, and the terms or Conditions of Plantation in force at the respective periods of transportation: the next kind of entries are what were called *Demands*, of which the following are examples.

—

7th April 1643. Mary Throughton demandeth 2000 acres of land, due by virtue of a speciall Warrant from his Lordship bearing date at London 1st August 1638, and assigned all her right in the said Warrant unto Nathaniel Pope

(*h*) pr me MARY THROUGHTON.

4th April 1643. Nathaniel Orchard demandeth 100 acres of land due by Conditions of Plantation for transporting himself into the Province in the year 1640.

(*i*) *Certificate to Governour.*

27th March 1643. William Assiter demandeth 300 acres of land due by Conditions of Plantation for transporting himself into the Province and 2 men servants in the year 1638—and assigned his interest in 100 of the said acres unto Robert Kedger.

24th January 1642. John Lewger demandeth fifty acres of land for transporting into the Province in the year 1637

(*h*) She appears to have acknowledged the assignment by her signature on the record.

(*i*) It is supposed that the Secretary, gave the party a Certificate of the fact of his having come into the Province at his own expence.

one maid servant named Ann P.—and assigned all the right in the said fifty acres unto John P. now the husband of the said Ann.

15th November 1642. (*j*) Anthony Penruddock, Esq. assignee of Mr. Edward Robinson, Esq. by his Attorney Thomas Carey demandeth 2000 acres of land due by Conditions of Plantation to the said Edward Robinson for adventuring in his Lordship's hands £100 in the first descent of the Colony for the transporting of 5 men.

12th November 1642. William Durford demandeth 150 acres of land at the West side of the mouth of Potomack, due by Conditions of Plantation for transporting himself and his son Joseph into the Province in the year 1640.

29th August 1642. Thomas Weston demandeth twelve hundred acres of land due by Conditions of Plantation for transporting himself and 5 able men into the Province in the year 1640, whose names were Richard H &c.

George Pye attested the bringing in of the said five men to his knowledge.

16th April 1642. Thomas Passmore hath entered upon record a demand of 200 acres of land due by Conditions of Plantation for transporting two men servants called Thomas P and Richard W in the year 1634 *as he hath affirmed by his oath.*

22d October 1643. Edmond Linnen demandeth 50 acres of land due to him by Conditions of Plantation for transporting himself into the Province this last month of September with intent to plant and inhabit here *for three years to come at least.*

1st July 1643. John Nott demandeth land by Conditions of Plantation for transporting himself into the Province this present year.

The said John Nott assigned over all his interest in the aforesaid demand unto Francis Posie.

Coram me : JO. LEWGER.

The Demands of land here selected are not immediately followed by Warrants of survey, the parties not having probably determined where to make their locations, or intending not to survey at all, but to sell their rights. The next examples will comprehend Warrants and Certificates of survey, of which as of the others it is not pretended to give with certainty the very earliest instances, the transcription of the records into books not corresponding in size with the original

(*j*) It appears by this entry that Lord Baltimore who is stated to have been at vast expence in founding his Colony, found it expedient to obtain deposits or advances of money to be repaid in land.

ones having scattered their contents in such a way that it is difficult to ascertain the first cases of any kind—The style as well as the dates of the proceedings here cited will shew however that they are *among* the earliest, and this is all that is aimed at.

—

"Thomas Petit demandeth two hundred acres for him and his wife, Arthur Hay 100 and John Gay 100.

7th March, 1641.—Lay out *some time before Midsummer* next at the furthest for Thomas Petit 200 acres of Land, and for Arthur Hay one hundred acres and for John Gay one hundred acres in any part on the north side of Patuxent river not afore disposed of and this shall be your Warrant.

Thomas Cornwaleys demandeth 2000 acres of Land by *first* Conditions of Plantation for transporting into the Province five able men servants in the year 1633, viz. J H, &c.

More demandeth 3000 acres of Land by Conditions of Plantation for transporting into the Province 15 able men servants since the year 1635, viz. M F, &c.

7th March 1641.—Lay out some time before Michaelmass next at the furthest 4000 acres of land in any part of Patowmack River upward of Port Tobacco Creek for Captain Thomas Cornwaleys, Esq. and *bound it with the most natural bounds as near as you may to the figure of a parallelogram*—And for soe doing this shall be your Warrant.

To Mr. Surveyour or his Deputy.

4th March 1641—Lay out for John Cocksheet, fiftie acres of Land upon the Hill next beyond the hill Creek called St. Joseph's Hill and *certifie the bounds thereof unto our Secretary without delay.*

Brought into the Province in the year 1637 by Giles Brent, Esq. 5 servants—Humphrey F, &c.

In the year 1638, six servants with his own person—John W. &c.

9th October, 1639.

MR. SURVEYOR,

I *would have you set forth* a portion of Town land for Captain Giles Brent, Esq. containing to the quantitie of sixtie acres or thereabouts lying nearest together about the Smith's Forge lately built by the said Giles Brent, and for soe doing this shall be your Warrant.

(*k*) Signed, LEONARD CALVERT.

(*k*) The preceding Warrants are supposed to be signed and directed in the same manner.

The Certificate.

9th October, 1639—Sett forth for Mr. Giles Brent, Esq. a portion of Town Land lying nearest together about the Smith's Forge lately built by the said Giles Brent, whereof the north bound beginning at a mark't tree on the top of the hill on the souther side of a Swamp called the Key Swamp and running by a straight east line above the head of the said Swamp is laid out for one hundred and five perches, the east side beginning at the end of the said hundred and five perches and running through the forest by a strait south line is laid out for one hundred and ten perches, the south side beginning at the end of the said hundred and ten perches, and running by a right line west north west *(or near that point)* to the corner of a *close* now hedged in by the said Giles Brent, and along that hedge to the bank of St. Georges River, is laid out for one hundred and ten perches, and the west side along the bank of St. George's River to the aforesaid marked tree is laid out for eighty perches or thereabouts, so that the whole area thereof containeth to the quantity of sixty three acres or thereabouts."

(*l*) JOHN LEWGER, Surveyor.

—

The Patent follows, reciting the rights as set forth in the *demand*, and granting the land for *sixty and some odd acres of English measure be it more or less.* The bounds are described in substance agreeably to the Certificate, but not *totidem verbis* and the form is abreviated as in many other cases, for which reason it is not here inserted.

—

Mr. Surveyor,

I would have you to set forth thirty acres of Land in a neck lying next to the east side of St. Andrews Creek, *and to draw a Patent for it* to William Lewis *in* freehold for the yearly rent of a barrell of corne and for soe doing this shall be your Warrant.

Signed, LEONARD CALVERT.

4th December, 1639.—Laid out for Mr. William Lewis one neck of land lying upon the northern side of St. Inigoes Creek and bounding on the west with St. Andrew's Creek; on the east with the freehold of St. Maries Hill, and on the north with the town land of Robert Clerk as it is distinguished by marked trees containing thirty acres or thereabouts.

JOHN LEWGER.

7th January 1639.—I would have you to lay out for Giles Brent Gent. Treasurer of the Council of this Province one

(*l*) It would seem that he was both Secretary and Surveyor.

thousand acres of land lying nearest together about Kent Fort and one thousand acres more where he shall desire it and to certifie Mr. Secretary what you doe therein.

To Robert Clarke Deputy Surveyor.

The preceding extracts are taken generally from Liber No. 1, of the Land Office records.—It is thought needless to point out the particular pages.

—

Memorandum. That I have assigned seven hundred and fiftie acres of land to Mr. Britton in a neck upon the main to the northward of Heron Island and to the eastward of St. Clements Manor, Provided, that he enter his names for which the said land is due in the Surveyor's book, and procure the same to be surveyed within a twelve month from the date hereof and take a grant of it under the great seal.

Signed, LEONARD CALVERT.

28th October, 1639.—William Britton Gent. demandeth five hundred and fiftie acres of land in freehold due by Conditions of Plantation for transporting himself and wife and one child and three able men servants, and two hundred acres more due by Conditions of Plantation to Thomas Nabbs for transporting himself and his wife whose assigne the said William Britton is by intermarriage with Mary daughter and heir of the said Thomas, the said persons transported into the Province of Maryland in the year 1637 to plant and inhabit there, and was allowed. Names of the three servants, John M, Richard H, James J.

June 29th, 1640.—Laid out for William Britton Gent. one neck of land lyeing in Potomack river, near over against Heron Island, and bounding on the south with the said Potomack river on the west with St. Clements Bay on the east with a great bay called Brittaine Bay, and on the north with a line drawn across the woods from St. Clements Bay unto the head of a little creek in Brittain Bay called St. Nicholas Creek, where now goeth the hedge of the said William Britton, the said neck containing in the whole seven hundred and fifty acres or thereabouts.

JOHN LEWGER.

Patent.

Cecicilius &c. Know ye that We for and in consideracon that William Britton, Gent. hath transported himself in person, his wife, one child, and three able men servants into our said province of Maryland in the year 1637, and that the said William Brittton is the lawfull heir of Thomas Nabbs who transported himselfe and his wife into our said Province in the year aforesaid to plant and inhabit there, and to the end the said William Britton and his heirs may be enabled &c.

Have by and with the advice of our Dear Brother &c. and according to the tenor of our Letters, under our hand and seal bearing date at Portsmouth in the realm of England 8th August 1636 and enrolled by our Secretary of our said Province granted enfeoffed &c. unto the said William Britton, all that neck of land lyeing in Potomack river &c. (ut supra in survey) To Have and To Hold &c. to the said William Britton and his heirs &c. to be holden of our Mannor of Little Britain Yielding therefore at our usual receipt at St. Maries fifteen shillings in money sterling or one barrell and a half of good corn, &c. Given &c. this tenth of July 1640."

LIBER No. 1, folio 68.

In the foregoing extracts may be perceived the origin of the Land Office establishment, and the rudiments of those forms which now prevail in public grants of land. It is true that land affairs were, at this period, jumbled in the then only existing office of record with public matters of every description, and even with private contracts and transactions; but the process in the former still consisted essentially of those particulars which form it now; namely, 1st, a public officer, authorised under certain regulations and restrictions to issue Warrants of survey for vacant land; 2nd, a claim, order, or other legal cause shewn to that officer for the issue of such Warrants, consisting then of *rights*, general or special, substantiated in the forms required, and recognized by their admission on record; answering in their effect to the present orders or titlings of the Treasurer, which inform the Register that the parties presenting them have done what is requisite to entitle them to Warrant; 3rd, the Warrant itself; being an authoritative precept to another officer, directing him to lay out and survey for the party therein named a certain quantity of land, and to return a Certificate of his survey; 4th, the Certificate so returned; and 5th, the Grant or Patent; to which may be added the attendant proceedings of assignments, petitions, caveats, trials, and decisions; all, with some changes in point of form—still in use; with various other matters gradually disused when land transactions ceased to be, as they then were, the main business of the Country. Having thus endeavoured to shew, in those early proceedings, the *origin* of that establishment the history, law, and practice of which form the professed subject of this work, I shall proceed to develope the progress of the system, by noticing such positive rules as were from time to time prescribed for its regulation and improvement; by selecting the most remarkable incidents,

proceedings, and examples, of every kind, and by such occasional remarks as may be necessary to connect them, and to shew in what manner they bear upon the subject of our enquiry.

The first regulation in land affairs must necessarily have concerned the manner in which persons claiming lands in virtue of the Conditions of Plantation should make proof of the facts on which their demands were founded. No express direction, however, appears on this subject prior to the first entries of rights, and the matter was probably committed for some time to the Secretary, to whom the emigrants, with all the circumstances of their arrival, must in general have been sufficiently known. He, no doubt, established such rules as were requisite towards uniformity and correctness in the proof and admission of rights, and where he was not otherwise satisfied, might exact from the parties such evidence as from the nature of the case could be obtained. The entry of Thomas Weston, with the attestation of George Pye that the five men therein mentioned were to his knowledge brought in by the said Weston, is the first example that has been observed of such additional testimony being given; but, it soon became necessary to guard against frauds in the exhibition of rights, which had became a medium of traffic among the settlers. Regulations were therefore prescribed for the proof of those rights by the oaths as well of disinterested persons as of the claimants themselves, and where such corroborative testimony could not be obtained, the parties were on application allowed their Warrants upon giving penal bonds with condition that the rights exhibited had truly accrued and had not already been used.

For the ease of the inhabitants, also, when the population had become in some degree extended, persons were commissioned in different quarters to take the probates of rights, of which they were enjoined to make periodical returns to the Secretary's office. In some instances these persons were empowered also, in receiving the proof of rights, to issue Warrants to the parties entitled, under the like injunction to make returns thereof to the Secretary at St. Mary's: Authorities or Commissions for this last mentioned purpose were subsequently given in various instances, unconnected with the proof of rights, chiefly with the view of promoting settlements in those extreme parts of the Province which were in dispute; but this practice, after full demonstration of its tendency to produce error, fraud, and confusion, was at a pretty early period wholly abandoned. The following Extracts and references will exhibit the practice in these two particulars.

" By the Lieutenant of Maryland.

" These are in the Lord Proprietary's name to authorize and appoint Captain Robert Vaughan Commander of the Isle of Kent County within the said Province of Maryland to grant Warrants for land within the said county to any adventurers or planters according to his Lordship's Condicions of Plantation, whereupon such land shall happen to be due to such adventurers or planters respectively, he the said Captain Robert Vaughan causing the said Warrants, together with the particular demands or assignments upon which the same shall be granted to be entered upon record by his Lordship's Secretary of the said Province who is to have his usual due fees for such Warrants and Entrys. Given at Providence in Ann Arundel County this 29th July Anno Domi. 1650.

Wm. STONE."

Lib. No. 1, fol. 170.

A like authority was given to the (*m*) Commander of Ann Arundel County, but, on the 18th of December 1652, Governor Stone issued a Proclamation, in which, after reciting these Commissions, and stating that not only the transmitting an account of Warrants, demands and assignments as required, to the Secretary's office was somewhat neglected, but the due return of Certificates under those Warrants also omitted, to the great prejudice of his Lordship in his rents, &c. he revoked all such appointments;—charged these Commanders to make full returns of their proceedings, and the Surveyor General not to " presume" for the future to survey any land within the Province without some Warrant or special direction from him (the Governor) or from the Proprietary; " his, (the said Surveyors), former irregular and " unwarrantable proceedings therein having occasioned much " trouble and inconvenience, to the great abuse both of his " Lordship's authority and the inhabitants."

Notwithstanding the abuses here complained of, the Government found an absolute necessity for making subsequent appointments of this kind, particularly on the disputed parts of the Eastern Shore, that is to say in the neighbourhood of Virginia, and on the borders of the Delaware:—Authorities much more extensive than the mere granting of War-

(*m*) The Commanders of Counties were officers invested with very extensive powers, rendered necessary, it is presumed, by the circumstances of turbulence and insubordination which attended the settlement of the Colony. They were in a word the chief officers both in military and civil affairs, not excepting judicial proceedings. The Lieutenants of counties, though of inferiour authority, take their origin probably from these establishments.

rants were given in some instances, as will be noticed in another place. The practice took its rise in the strong inducements of the Proprietary to effect settlements in the frontier parts of his Province, for which purpose it was necessary to carry to those quarters the requisite facilities for taking up land, which for still greater encouragement was, as some of the Conditions of Plantation will shew, set at half the price of land elsewhere—This was in fact the case at some periods with the whole of the Eastern Shore, but the lands on the Chesapeak were at that time generally taken up.

5th April 1653. These are to authorize Mr. Thomas Hatton his Lordship's Secretary to grant Warrants for land upon Patuxent River notwithstanding any former directions from me to the contrary in any place there at a convenient distance from any Indian town there as the Surveyour shall think fit, to any persons that have or shall before such Warrant granted make their rights duly to appear. The Warrants already granted by myself, as also the rights of Mr. James Knott, so far as he hath made demand be first served —Given the day and year abovesaid.

WILL. STONE.

Lib. A. B. and H. fol. 309.

" *At a Council held at St. Mary's on Friday the 6th of June* 1662.

" Then it was ordered that this Oath should be tendered unto every person entering rights to land upon record.

" You shall swear that these persons here by you named " were transported into this Province here to inhabit, and " that no land hath been taken up for them legally within the " Province, So help you God."

Council Book, H. H. fol. 148.

On the 18th of February, 1667, Daniel Jenifer was appointed to prove rights and grant Warrants by a Commission from the Governor Charles Calvert, of which the following is an Extract.

" I do hereby empower and authorise you Daniel Jenifer " Clerk of the Secretary's Office, and the Provincial Court " to prove all rights of land, that shall be originally due to " any person or persons whatsoever and allowed according " to his Lordship's Conditions of Plantation in such cases " made and provided; also to sign, subscribe, and seal with " the seal of the said Office all Warrants for land be they of " what nature soever that have just grounds from the said " Conditions for the issuing of the same or upon any consi- " derations whatsoever now used and allowed in such cases " in the said Office—signifying under all and every such

" Warrant so by you signed to be done by my order and ap-
" pointment, &c."

Council Book—H H. fol. 292.

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Thomas Binkes represents by Petition to the Governor that he has rights due to him for five hundred and fifty acres of land according to his Lordship's Conditions of Plantation for transporting eleven persons, therein named, into the Province *to inhabit*, but that he " cannot make probate there-
" of by Oath in usual form,"—prays therefore that upon his giving Bond into the Secretary's Office, that he never made use thereof he may have the benefit of the said rights. The following is the answer endorsed on his Petition.

" *Mr. Secretary Calvert*,

" Provided, that Thomas Binkes of Calvert County do
" give good security to the Lord Proprietary of this Province
" that the rights of the within-mentioned persons were never
" yet disposed of, and do nominate the Ship's names and the
" Commander in which they were imported, the year and
" day of the month when imported, and that they were im-
" ported into the Province at his own proper charges and for
" his own account or were legally assigned to him ———
" to the property of their rights for land, and that they serv-
" ed their full time of service in Maryland, so that any time
" the contrary can be proved the bond to be forfeited, then
" you are hereby ordered to give him a Warrant for rights
" of land due as in the Petition mentioned without further
" proof: Given under my hand the seven and twentieth day
" of May, one thousand six hundred seventy seven.

" THOMAS NOTLEY."

LIBER, No. 20, fol. 1.

A bond is accordingly given in the penalty of ten thousand pounds of Tobacco to be forfeited if the said Binkes hath already made use of or assigned any of the aforesaid rights.

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The *assignment* of *rights*, of which various instances have been shewn in the entries just selected from the records, must necessarily have been a practice of frequent occurrence, as land rights formed, excepting (*n*) tobacco, the most current instrument of traffic among the colonists. These assignments were so numerous as to lead to a full belief that there must have been books subsidiary to those of general record, for the

(*n*) There appears to have been very little money in the Province. Tobacco became immediately the staple commodity, and at the same time the medium of all contracts, payments, &c. Paper currencies were not resorted to until at a very late period.—A coinage was attempted by the proprietary in England but does not seem to have been prosecuted to any useful effect.

purpose of entering the rights in a short form in succession as they were exhibited, with the subsequent transfers, until they were sunk in Warrants of survey, and these in the consequent certificates and grants. Books of this nature however, serving only as an immediate convenience and check of office, have not, like the records at large, been kept alive by transcription; and although such abstract entries were, without much doubt, in use, all assignments were, so far as can be judged from appearances, placed on record before they were allowed their intended operation.

We have noticed, among entries preparatory to the issue of Warrants, those of claims not founded on the Conditions of Plantation, but flowing from the special favour of the Proprietary. Of these some were, themselves, denominated special Warrants; others were called Gifts, Grants, Orders, &c. They were, in short, directions, sometimes by Letter to the Governor; on other occasions by more formal precepts, to cause a certain quantity of land not already granted or reserved, to be laid off for the person therein named, and a Patent to be thereupon granted to such person upon Conditions particularly described in the order; for it is to be observed that although the Proprietary frequently bestowed land for very trifling, and sometimes for mere nominal considerations, he never made a grant without *some* reservation of rent or service. The following selections will shew the nature of these special Grants, and of what may be called extraordinary or irregular Warrants, in which nothing seems to be consulted but the pleasure of the Proprietary or his Lieutenant, and no form observed in the manner of expressing it.

—

6th May 1640.—"Mary Throughton Widow demandeth fifty acres of land due by special Warrant from his Lordship for transporting herself and 6 servants into the Colony in the year 1638."

"Dear Brother,

(L.S.) "I would have you to pass to Mrs. Mary Throughton and her heirs for and in respect of four persons men women and children besides herself which she transports this year to plant in the Province of Maryland, a Grant of as much land in and about the town of St. Marys and elsewhere in that province in as ample manner and with as large privileges as any of the first adventurers have for and in respect of the transportation thither of five men in the first year of that plantation, reserving only to me and my heirs the like quit rents also which are reserved from the said adventurers, and for so doing this shall be your War-

" rant. Given under my hand and seal at London in the Realm " of England this first day of August 1638.

" *To my dear Brother Mr. Leonard Calvert,*
" *Esq. my Lieutenant Gen'all of the Pro-*
" *vince of Maryland.*"

LIB. No. 1, fol. 64.

A special Warrant from the Proprietary in favour of William Mitchell Esq. dated 18th of January 1649, recites that the said Mitchell had " covenanted and undertaken to make " his personal repair with his family to Maryland the next " summers expedition, and to convey thither at his charge " so many persons as to make his family twenty persons at " the least, divers of them being Artificers, Workmen, and " other very useful persons, and now ready to be transport- " ed;"—and the following summer to transport at least ten persons more for the making, erecting and settling a considerable plantation, for " which purpose he hath been at great " charge in Provisions, and hath well stored himself with " ammunition for the better defence of such his plantation, " and consequently of the Province, &c." The Proprietary therefore directs a grant of three thousand acres to be passed to the said Mitchell under the usual rent of two shillings sterling for every hundred acres, to be paid for ever, which land is to be in full satisfaction of all that the said Mitchell could claim by the last Conditions of Plantation for the transportation of the said thirty persons or any of them thither. The said land to be allotted to him his heirs or assigns in such place or places as he or they with the approbation of the Lieutenant General and Surveyor General shall make choice of not already granted, assigned, or inhabited—to be erected into a Manor, &c.—ON CONDITION that if the said William Mitchell do not within eighteen months transport the full number, of thirty persons as aforesaid, and twenty of them in the first summer, that then for every person wanting One hundred acres, shall be deducted out of the aforesaid quantity, and the Proprietary be authorised to re-enter and repossess so many hundred acres as there shall be persons so wanting.

LIBER No. 3, folio 408.

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Special Warrant to James Lindsey and Richard Willan for a grant of the Manor of Snow-Hill, supposed to be escheat to his Lordship. The said Grant to be made as the Proprietary declares in Consideration of the service rendered by those persons on the occasion of Ingle's insurrection, which reason he directs to be inserted in the grant, with notice " of their singular and approved worth, courage, and

" fidelity, to the end a memory of their merit and of his " (the Proprietary's) sense thereof may remain upon record " to the honour of them and their posterity forever."

LIBER, No. 3, folio 410.

A similar one upon the same ground to John Jarbo and William Evans of a Plantation in the Isle of Kent, forfeited by the rebellion of the former owner, is followed by like Warrants for large Manors to Eltonhead, Brooke &c. upon Conditions of future transportations.

LIBER No. 3, folio 412.

" Instructions given by the right hon'ble Cecilius Absolute " Lord and Proprietary of Maryland and Avalon, Lord " Baltimore &c. To his Lordship's son and heir Charles " Calvert Esq. his Lordship's Lieutenant of the said Pro- " vince of Maryland.

" His Lordship doth hereby authorize and require his " said Lieutenant that as conveniently as he may after the ar- " rival in the said Province of Jerome White Esq. his Lord- " ship's Surveyor General of Maryland, that he take order " that two or three hundred acres of land as near to his own " seat at Saint John's as he can, be assigned to the said Je- " rome White and his heirs in the most convenient place " for the planting of a Vineyard there under the usual year- " ly rent of two shillings sterling for every hundred acres, " except West St. Maries and St. John's" &c. 16th September, 1662.

LIBER No. 5, folio 421.

" I do hereby order and empower you Richard Hill to " cause to be marked some trees on a small tract of land " about four hundred acres or thereabouts lying at the head " of Bohemia river, being the usual landing in the road to " Appoquiminy. Given under my hand this 26th June " 1675. " CHARLES CALVERT.

" *To Mr. Richard Hill.*"

LIBER No. 15, folio 360.

" When the Certificate of Survey for a parcel of land " about four hundred acres lying at the head of Bohemia Ri- " ver, being the usual landing in the road to Appoquiminy, " for which I gave the said Hill a former order to make for " himself is returned into your Office in the name of Captain " Richard Hill, let him have Patent made for the same, The " consideration being our free gift.

" *To the Honourable William Calvert, Esq.*

" *Principal Secretary.—June 1st*, 1676."

The Warrants issued at the early period to which we at present refer could only be those of original survey. The form of these, it has been seen by the examples given, was very loose and unsettled, as were also the distinctions of *common* and *special* now applied definitely to all Warrants of this kind. They were frequently of the nature of special Warrants as far as circumstances then permitted, it being in most cases impracticable to give them a location more precise than by designating the particular district or quarter in which they were to be laid. The periods prescribed for the return of Certificates of survey upon those Warrants appear to have been also loose and arbitrary. They were probably regulated by the quantity and the situation of the land to be surveyed: Six months seems to have been the mean period assigned for this purpose; but the Warrants at the expiration of that term were renewed upon application or others with new locations issued upon the surrender of the former ones. Not only Warrants and Certificates, but Patents themselves, were at this time transferrable by assignment, endorsed thereon, or in the case of the two former, made and acknowledged before the Secretary, and by him entered on record. The assignment of Patents, which will be hereafter more particularly noticed was attended in general with more solemnity. It is necessary here to observe that the practice in the points already spoken of, and a variety of others is gathered only from the records of particular cases, and not from any positive regulations now to be found. Hence our accounts must frequently appear conjectural and inconclusive until we arrive at a period when the Land Office establishment became distinctly organized and the proceedings of course took a more determinate and regular form.

The surrender of Warrants, which has just been mentioned, is not perceived to have been provided for by any express regulation, nor to have been a practice frequently occurring. It appears however to have been allowed as a matter of course, although doubtless within the controul of the government. The object of this proceeding is supposed to have been a change of location, or the gaining time to look out for eligible lands; the parties choosing in the interval to let their claims rest upon the *rights* standing to their credit in the office, instead of keeping their Warrants in force by periodical renewals. Accordingly upon the surrender of a Warrant the rights on which it was founded were revived as if it had never been issued. New Warrant was sometimes immediately taken, or the revived rights applied in

payment for lands taked up under (*o*) *Conditional* Warrants: otherwise, they stood, as has been said, to the credit of the parties, and were transferred and applied as occasion required in more ways than it would be now either useful or practicable to describe.

The *letting fall* of Certificates and even of Patents was like the (*p*) other a practice arising out of the mere acquiescence of the Government, and became after some years extremely frequent. It had, in general, the same object as the surrender of Warrants, namely, the obtaining more eligible lands, but was often accompanied by specified reasons, such as errors committed in the surveys, interference with prior locations, &c. It did not cease even when a more regular proceeding for annulling erroneous surveys and grants had been provided in the establishment of courts of law and equity, but at length gave way to the system of *vacation* on record as practiced at the present time.

The Certificates of survey were in these early periods very inartificial in their structure, and were defective and not reciting the Warrants on which they were grounded, as were likewise the Warrants generally in not noticing the particular rights in which they originated. The Patents too exhibit in many instances the like want of reference to the Certificates. The omission of those requisites may partly be accounted for by the supposition already stated of auxiliary records, since destroyed by time, or transferred to the Proprietary's revenue agents, as many other documents arising in the Land Office are presumed to have been. In general the system of entry, with exception of a few of the earliest years, appears more remarkable for a verbose exactness than for deficiency in its forms.

The *Examination* of Certificates, previous to their being (*q*) recorded and patented was probably at first an implied duty of the Surveyor General, whose power of appointing

(*o*) Conditional Warrants were those granted on an engagement to make good rights within a limited time. At subsequent periods, when money was required for land, instead of *rights by transportation*, the Proprietaries thought proper occasionally to grant Warrants on credit.

(*p*) The surrender of Warrants previous to a survey was in fact but rare, but in letting fall their Certificates, the parties generally sunk also their Warrants, and rested upon the *rights* until they were prepared to make other surveys.

(*q*) It will surprize those who are in any degree acquainted with land affairs to find that during a long and important period of the Poprietary government Certificates were entered upon record immediately on being returned to the office, and previous to Patents being issued on them. For want of a knowledge of this fact, there has hitherto been a strong presumption in the office itself that every Certificate found upon record had been patented, although the Patents of many of them do not appear. How far the same presumption may have influenced judicial decisions, I am not informed.

his deputies involved some responsibility for their conduct and the correctness of their work. There is no (*r*) evidence, however, of a regular and distinct provision for the examination of Certificates until the year 1685 when the Office of Examiner was annexed in the person of Thomas Taillor to that of Deputy Surveyor General and his duties defined. Previous to this appointment, and at the period at which the Land Office received a new and distinct organization the Surveyor General's approbation is expressed at the bottom of the Certificates, which implies an examination. On this subject further remarks will hereafter occur.

There does not appear to have been for several years any rule requiring Certificates to lie a certain time in the office before they could be patented. The only object of regulations on that head being to give time for *Caveats* by those who might have some cause to alledge against the issuing of the grants, there could have been but small occasion for such a rule while all surveys were recent and their lines designated by visible boundaries, so that any trespass on elder tracts might with ease be avoided. Where any particular reason existed for stopping the issue of grants it was done by a special order from the Governor, as in the case of a surveyor concerning whose conduct some suspicion was entertained, and on whose certificates the Secretary was forbidden to issue Patents until further orders. But with such exceptions as these, grants were passed, as a matter of course, on the return of the Certificates unless Caveats were previously entered against it. As to these, they arose not from any particular regulation, but from the nature of the object, to which this proceeding and no other was adapted; for, until the Proprietary's title had been passed by Patent, interfering claims could not be brought before the courts of law, as on the contrary after Patent the (*s*) courts were the proper tribunals for decision. A person, therefore, apprized of a Survey or a Warrant affecting his rights, and representing the

(*r*) That is to say, no commission is found; but *Robert Jones* and *Clement Hill* had before this, in succession, been charged, as Deputy Surveyors General, with the examination of Certificates, for which particular purpose it seems likely that the office of Deputy Surveyor General was created. It was upon Mr. Hill's being appointed to a superiour station, that the Surveyor General moved in Council for the appointment of an *Examiner General* and the manner in which he described the duties proposed to be attached to that office shewed that they had never been defined.

(*s*) This is stated as a general rule, and at the present day it is a settled principle that the operations and jurisdiction of the Land Office cease in all respects, after Patent has been issued: but it must be owned that the Proprietary Government did not always respect this principle, Patents being often annulled without any judicial decision.

matter to the (*t*) Governor or Secretary, had his complaint entered in the form of a *Caveat*, being in its nature, and from the etymology of the word, a *Caution* to the proper officer not to issue Patent in the case in question. The method of bringing these disputes to hearing and decision was essentially the same as at present. Defendants and witnesses were summoned, or the depositions of the latter taken by particular *orders* for that purpose. The matter was tried *summarily* and determined on (*u*) *principles of equity and good conscience*, by the Governor who was the sole judge in Land affairs, but generally availed himself of the assistance of the Secretary and the Surveyor General, and sometimes of his Council at large. The appointment of Judges of the Land Office by that denomination and their principles and modes of proceeding will be noticed in a succeding part of this work.

It has been observed that Warrants were often so far special as to contain a designation of the particular district in which they were to be executed. A few words more are necessary upon that subject: Warrants are said to have a location when they are directed to be executed at a particular *place*, that is to say, on, or adjoining to, certain lands therein specified. All Warrants located are called special Warrants in contradistinction from common or general Warrants which may be executed any where; but Warrants may be special in other respects besides that of location. The Proprietary's Conditions of Plantation were general Warrants, authorising the proper officers to pass grants of land to all persons who could shew that they had, by the performance of certain requisites, entitled themselves thereto. Orders from the Proprietary in favour of particular individuals were *special* Warrants, and to those only the term was originally applied. The first notice of a distinction between special and common Warrants as referring to location is found in an act of Assembly of the year 1750 "concerning the Secretary's and Clerk's fees: in which it was directed that those officers

(*t*) By some of the examples that will be given of Caveats it will be perceived that at a certain period they were instituted and tried in the courts of law—But this was in Cromwell's time, and is not a part of the regular practice. The ministerial officers of the Proprietary were generally invested with the power of determining whether Patents should issue on the Certificates lying in his Land Office, and so far as those questions came under their cognizance they were governed by the principles that prevail at this day.

(*u*) It is on these principles that contests in the Land Office are determined at present, for so the law directs: So by stronger reason those contents must have been decided on grounds of equity under the Proprietary government, since the proceedings of the Land Office out of which those disputes generally arose, were in no particular regulated by law. The principles of decision here referred to, are prescribed explicitly in all commissions to the *Judges* of the Land Office.

should be allowed for every *extraordinary or special* Warrant double the fee of an *ordinary* Warrant. But, although in the early times some Warrants were directed to be executed *in any part of the Province* not already surveyed or reserved, and others in particular situations, sometimes as precisely described as they are at present, there was not the exact distinction that now prevails in that matter, for the lands intended in either case were then supposed to be uncultivated, whereas it is now for the purpose of affecting land that cannot be taken by a common Warrant on account of its not being *waste* or *uncultivated* that special Warrants are taken. It was about the time of the act just mentioned, that is to say, at the commencement of Cromwell's Protectorship, that the people of Maryland began to make locations for the purpose of guarding the lands they had in view from the operations of younger Warrants until they should find it convenient to make their surveys ; and at the same time arose a practice connected with this, of marking trees preparatory to actual survey, and, of entering what were called *Caveats* in the office for the lands which the parties had in view.—These, which were irregular proceedings, occasioned by the circumstances of the Province at that juncture, are not proper evidence of the established (*v*) practice of the Land Office, but they are noticed in order to shew the rise of *location* in Warrants, which ingredient now gives them a particular character and efficacy, and on the precision of which frequently depends all the benefit aimed at in obtaining such Warrants. It is proper to observe that locations, at the time we are speaking of, were not always made at the choice of the parties, but sometimes by that of the government, in pursuance of a principle to be found in the 9th article of the Conditions of Plantation of 1648, and the 7th of those of 1649, but which must necessarily have prevailed in the earliest surveys, since the safety of the colonists consisted in the compactness of their settlement, which must therefore have been an object of public concern and regulation. The following passages, references &c. are inserted by way of example of the several points of practice embraced in this recital.

DURATION AND RENEWAL OF WARRANTS.

" 1st December, 1648.—Warrant to Surveyor to lay out 100 acres for Lieutenant William Evans and John Jarboe in Bretton's Bay—*ret. by the 16th March next.*"

LIBER A. B. and H. fol. 12.

(*v*) There are instances however of permission from the Surveyor General to mark trees previous to actual survey after these causes had ceased.

" 30th May 1648.—Warrant to the surveyor to lay out 50 acres to James Walker upon the east side of Wicomico River —*ret. by the last of October next.*"

LIBER A. B. and H. folio 15.

" 18th March 1649.—Warrant to lay out two hundred acres of land for Hugh Hopewell and Thomas White at Hog-pen Tavern Neck at or near to Sanawackett on the south side of Patuxent River—ret. by Michaelmass next.

LIBER A. B. and H. folio 35.

22nd February 1652.—Warrant to lay out two hundred acres for Luke Gardiner at the head of St. Clements Bay about three miles above the salt water upon the main run that falls into the said Bay, or in any other place thereabouts not formerly taken up—ret. by Christmas next."

" 12th October 1652.—Warrant to William Stephens—*ret. 1st February.*

1st February *renewed*—ret. 1st June next."

LIBER A. B. and H. folio 272.

" 24th July 1653.—Warrant *rend.* to lay out one hundred acres for John Launcelott in any part of the Province not formerly taken up—ret. 25th March next, and is for his own transportation, Anno 1647."

LIBER A. B. and H. folio 331.

" April 11th 1667.—Came Joseph Weeks, Gent. and *desired* his Warrant for eight hundred and fifty acres of land dated the 5th of April 1666—ret. the 5th of September then next might be *renewed.*

Warrant then issued to the said Joseph Weeks, Gent. for eight hundred and fifty acres of land (due to him by the *renewment* of a Warrant for the same quantity to him formerly granted 11th of July next."

LIBER No. 10, fol. 468.

April 12th 1667.—Came Francis Anketill and *desired* his Warrant for one hundred acres of land, being the renewment of a Warrant to him granted and three hundred and fifty acres by assignment of a Warrant from Raymond Stapleford formerly granted the said Stapleford, and one hundred acres more by assignment from Daniel Jenifer, in all five hundred and fifty acres dated the fifth day of October 1667, ret. the 5th January then next, *might be renewed.*

Warrant issued *returnable* 1st July following.

LIBER No. 10, folio 468.

SURRENDER OR LETTING FALL OF WARRANTS, CERTIFICATES AND PATENTS.

" MR. SURVEYOR,

" I would have you to set forth thirty acres of land in a " neck lying next to the east side of St. Andrew's Creek and

" to draw a Patent for it to William Lewis in freehold for the " yearly rent of a bushel of Corne, and for soe doing this " shall be your Warrant.

" Signed LEONARD CALVERT.

" 4th December 1639.

LIBER No. 1, folio 46.

" 4th December 1640.—Laid out for William Lewis one " neck of land lying upon the northern side of St. Inigoe's " Creek, and bounding on the west with Saint Andrew's " Creek, on the east with the freehold of St. Mary's Hill, " and on the north with the town land of Robert Clerk as it is " distinguished by marked trees, containing thirty acres or " thereabouts.

" JOHN LEWGER."

" (*w*) Cecilius &c. that part of a neck of land &c. ut supra. " To be holden &c. as of our Manor of East St. Maries &c. " yielding &c. one barrell of Corne &c. Given 5th Decem- " ber 1640.

" 1st May 1643.—*The said William Lewis surrendered all " his right in the said Patent to his Lordship.*"

In the margin of a special Warrant from the Proprietary to Henry Sewall Esq. of London for 2000 acres dated 12th September 1661 is the following entry.

" This special Warrant is surrendered up into the hands of " Charles Calvert Esq. the present Lieutenant General this " 20th day of May 1663 by me Henry Sewall Esq. Witness " my hand.

" HENRY SEWALL."

LIBER No. 4, fol. 615.

Opposite to Patent to Robert Tyler and Abraham Dawson 100 acres, *the Plain* granted under the Conditions of 1649, in consideration of their having transported themselves to the Province " *to inhabite*" is the following.

" This Patent is made void by the said Tyler and Dawson " and Warrant for the rights herein specified granted them, " to take up land elsewhere."

LIBER No. 7, fol. 259.

Robert Loyd's Patent 100 acres—The triangle Neck—(in the margin) " Patent lett fall with Res'y."

LIBER No. 7, fol. 284.

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In the preceding case which will be cited hereafter for another purpose, it appears that after two assignments of the Patent, the third owner discovered the Land to be one half deficient in quantity through the mistake of the Surveyor and

(*w*) This is a short record entry of the Patent.

upon " having surrendered up the said grant and caused the same to be vacated upon record" obtained a Warrant of Resurvey, with liberty to amend the error, not running for that purpose into any elder survey.

—

Francis (x) Armstrong of Talbot county obliges himself to take up five hundred acres of good land towards the head of Choptanck River for the use of Peter Sharpe in considerration of the said Sharpe's letting fall and relinquishing to Armstrong the rights of a survey of that quantity adjoining the other's land:—the said five hundred acres to be taken up by the "same rights or Warrant" as served to take up the former land: at foot of which agreement is the the following, viz.

" This above said five hundred acres of land which was formerly taken up by me I do *lett fall*, it being not cleared of Francis Armstrong's land, as witness my hand the twentieth of the fifth month one thousand six hundred sixty five."

LIBER No. 9, fol. 86.

" MR. JENIFER,

Mr. Winslow is willing to let fall the parcel of land called New Harbour containing seven hundred acres as by a note from under his hand may appear, wherefore pray please to make it void out of my certificate delivered into the office August first one thousand six hundred sixty five.

Pr. HENRY PARKER, Deputy Surveyor.

" I, Samuel Winslow do hereby acknowledge to relinquish my interest of the land surveyed for me in Tuckahoe Creek called New Harbour, containing seven hundred acres and now entered into the office for me and in my name the same hereby I desire to let fall and make void as witness my hand this two and twentieth of September one thousand six hundred sixty five.

SAM: WINSLOW.

TEST { *Francis Armstrong.* / *Henry Parker.*

LIBER No. 9, fol. 162.

" The Honourable Charles Calvert Esq. returns two War-
" rants into the Secretary's office, one for one hundred acres
" dated the eighteenth of August one thousand six hundred

(x) Armstrong's obligation is dated the "*nineteenth day of the third month called May;*" the fifth was of course July. The reader will be aware that this was in the old style, under which the year began on the 25th of March. The singularity observed in this contract, of naming the months by their numbers, cannot be well accounted for, as no other instances of it have been perceived, and the people who now have that practice were scarcely tolerated in Maryland: Strangers (at least) of that description being treated, when found in the Province, with indignities which I do not chuse to mention.

" sixty five, the other one thousand acres of land bearing date " with the other—both which warrants he *letts fall.*"

LIBER, No. 9, fol. 476, Anno 1666.

" June 14th, 1670.—Came William Elgate of the County " of Somerset, Mariner, and desired that he might lett fall " a Patent of a parcel of land to him granted the 2nd of Au- " gust 1668 called Genesex containing two hundred acres, " and that the same might be vacated upon record, the rights " of which he assigns away as followeth."

Here follow the assignment and a new Warrant to the assignee, due " by the said Elgate's " *lett fall*" of a Patent, &c.

LIBER 12, fol. 575.

Edward Blay of Cecil County desires to surrender two Patents for lands which he conceived to be within his Lordship's Manor in Chester River, and to be admitted his Lordship's tenant for the same.

" Ordered that the said two Patents be cancelled and vacat- " ed upon record, and that Lease be granted to the said Blay " for the said two tracts for the terme and space of one and " thirty years, at the rate of twelve hundred pounds of to- " bacco per annum."

LIB. C. B. No. 1, fol. 30.

CAVEATS.

" September 26, (1651.) Mr. Friendship Tongue this " day came and entreth a Caveat against that noe Patent be " granted to Henry Pountenay of a parcel of land upon a " branch of St. Jerome's Creek till a tryall in Court."

LIBER No. 1, folio 181.

" A Caveat is this day entered on the behalf of Susanna " Porter widow, the relict of William Porter of the Isle of " Kent concerning her late husband's Estate."

LIBER No. 3, folio 94.

September 5, 1665. " Then came John Edmondson and " enters Caveat against that parcel of Land for which Cer- " tificate is returned by Henry Parker Deputy Surveyor and " in the name of Samuel Winslow Mariner called Bridge- " Water conteyning by survey three hundred acres, the " said Edmondson having a Certificate of survey for One " hundred acres being part of the said land and surveyed the " twenty sixth of May one thousand six hundred sixty five,

" the above said Certificate being of late style, which is the " sixth of August one thousand six hundred sixty five—the " said John Edmondson desiring that no Patent may issue " for the said three hundred acres until his right and clame " be first heard and determined.

LIBER, No. 8, folio 208.

—

September 14, 1668. " Came Benjamin Rozer of Charles " County Gent. and enters Caveat against the Certificate of " Geo. Thompson of the said County, Gent. on behalf of the " Lord Proprietary, being for one hundred and fifty acres " of land called Ely, lying in the aforesaid County, that no " Patent or Grant Issue for the same out of the Secretary's " Office until his said Lordship's clame be heard and deter- " mined therein."

LIBER No. 11, folio 510.

—

" *Mr. John Llewellin*,

" I desire you to enter a Caveat in the Land Office that " no Patent issue upon a Certificate returned in the name " of Wm. Wilkinson for acres of Land until I on the " behalf of an orphan Mary Clarke have a qearing concern- " ing the same land before his Lordship and Council, &c.

" From Sir, yours to serve you

" MILES GIBSON."

May 9th, 1682.

LIBER W. C. No. 4, folio 183.

—

" *Mr. Llewellin*,

" SIR,

" In May last I entered a Caveat against William Wilk- " kinson that no Patent should issue forth till I had a hear- " ing before his Lordship about a piece of land belonging to " an orphan: I would desire you to withdraw the said Ca- " veat which at present is all from, Sir;

" Yours to command, &c.

" MILES GIBSON."

Nov. 15th, 1682.

LIBER W. C. No. 4, folio 273.

—

" *By the Council, June 27th*, 1684.

" MARYLAND *ss.*

" Ordered that Caveat be entered in the Land Office " at the request of Nicholas Hackett against two Certificates " there lately returned by Mr. William Coursey (viz.) one

" of two hundred acres of land for Thomas Hutchison and " the other of two hundred acres more for John Stanley and " Christopher Baitson that no Patents issue for the same " until the said Hackett shall be admitted to make appear " his right and claim thereunto and that you receive further " order from this Board. Signed, pr. Order,

" JOHN LLEWELLIN, Clk Consill.

" *To the Hon'ble the Secretaries or their*
" *Chiefe Clerck of the Land Office.*"

These

LIBER W. C. No. 4, folio 491.

" MARYLAND, *June 27th*, 1688.

" *Mr. Denton*,

" SIR,

" I understand that there is returned into the Secretaries " office for Land Certificates in the name of Mr. Scuda- " more of Baltimore County deceased, he being my debtor at " the time of his decease and there being great pretences " made by Major Thomas Long to the said Scudamore's " Estate therefore enter this Caveat against Patents issuing " out for the land mentioned in the said Certificates, and " that the said Certificates being as yet but a *Chattell* is liable " to pay Creditors, but when Patents issue for the same they " then being a real estate, no law of this Province entitles any " just creditor to the same without extraordinary charge " and trouble therein—he desires to be by the Council for " lands heard before Patents issue concerning the same, that " is, Sir, your loving friend and servant,

" PHILIP LYNES."

LIBER D. S. No. F. folio 232.

CHAPTER V.

OF MANORS AND RESERVES.

THE foregoing remarks and examples describe those forms of proceeding which were necessarily attached to the Land Office at its outset, and relate, of course, only to original surveys, and chiefly to cases of common freehold grants.

Before we proceed to develope the practice in regard to re-surveys, and the various other particulars which remain to be examined, it will be proper to notice such matters as were peculiar to grants of Manors, and to give some account of those lands which were either appropriated in fact to the use of the Proprietary by that denomination, or provisionally set apart by his direction by the name of *Reserves*. In regard to these last I shall just remark, for the present, that the Proprietary, as absolute lord and owner of the soil, assumed the right of reserving for his own use such tracts or quantities of land as he thought proper. The exercise of this privilege, however, had not always for its end the actual appropriation of the lands in question to the use of the Proprietary, but served indirectly to confine surveys and settlements to those parts of the Province in which it was desired they should take place, and in particular to keep them sufficiently separated from the districts still occupied by the different tribes of Indians with which the colony was surrounded. Accordingly when a reserve had been laid with either of those views and had answered its purpose, it was taken off, and surveys permitted on those lands as elsewhere. To enumerate all the reserves which were laid under the Proprietary government, with their respective times of duration, would be a task of some difficulty and of no *great use*. It is not even proposed to give a list of all the Manors which were from time to time erected, many of these having been, as the records term it, *let fall* at very early periods, so that no trace probably remains of them in the quarters in which they existed; a few references however will be given in each case and such Manors and reserves as remained in the hands of the Proprietary at the time of the revolution will in a succeeding part of this work claim particular notice, as composing a distinct branch of the property to which the State of Maryland then succeeded, and the disposition of which formed and still forms the principal object of the Land Office establishment.

Reserves, as has been stated, were, simply, parcels of land on which the execution of Warrants was interdicted. They were sometimes however marked out by actual surveys in the name of the Proprietary, but were more generally only designated in the first instance by some adequate description. Of Manors there were three kinds, distinct at least in their circumstances; viz. those erected in the name and for the use of the Lord Proprietary, and for which, as a man does not convey to himself, grants or patents, did not pass; those which were erected by the special orders of the Proprietary for the benefit of his relations, &c. with particular conditions and privileges; and those which assumed that name, agreeably

to the Conditions of Plantation, in virtue of the quantities of land which they contained. This last kind was of course very numerous, as every distinct body of one, two or three thousand acres granted to any one adventurer was, by the Conditions of Plantation of 1636, to be erected into a Manor with the privileges of Court Baron and Court Leet, of the practical use of which, however, in those inferiour Manors no memorial appears on record. The nature of the second kind of Manors will be understood by reference to the Proprietary's instructions of the 20th September 1665, (presently to be inserted) to his son Charles Calvert, then governor or lieutenant of the Province, authorising a grant, under the great seal, to the said Charles Calvert, of certain Manors or estates therein described. The directions contained in this instrument respecting demense lands, and other particulars, will give a sufficient idea of the nature and tenure of those grants. In these Manors, and more especially in those held by the Proprietary in his own name, it is understood that the privileges attached to them were actually exercised. Of Baronies little need be said, as but very slight traces of their establishment in Maryland have reached the present times. The Province is stated in Chalmers's Annals, already cited, to have been divided into Baronies and Manors: the latter were actually the estates of individuals: the others were paramount feudal signories, each as it would seem, comprehending several Manors; but in what persons, and under what express titles they were vested does not appear, as no grant of a *Barony* is to be found on record, from which it may be inferred that they were mere divisions for feudal, as counties and hundreds were for political purposes; that the privileges attached to them remained with the Proprietary himself, and that these are the *honours* of which the grants of Manors are generally found, on record, to be held. The co-relation, and the respective privileges of these Lordships and the inferiour Manors are stated by the above mentioned writer to have been accurately settled: That such an adjustment was at least attempted appears plainly from several Bills framed by the first Legislative Assembly held in the Province, but dissented to by the Proprietary, and of which the titles only are now to be found. Lord Baltimore himself had also, previous to this, sent in a number of Laws, probably containing regulations on the same subject, which were rejected by the *Freemen*, as the Colonists met in Assembly were then denominated. The privileges therefore of Baronies and Manors were not defined by law; for if the Proprietary and the Legislative Assembly had at last agreed on regulations for that purpose, and the acts and records thereof had been lost in the disturbances of which we have given an ac-

count, it is not to be supposed that those acts would never have been renewed, so as to appear, at least by name, at this day; instead of which we find, even by title, only those bills which were confessedly never passed into laws. But that this enquiry may not appear altogether frivolous I must observe that, in whatever way they were settled, substantial privileges did unquestionably attach in the early times of the Province to all Manors, the annual rent of which, reserved by the Proprietary, was, therefore, at a certain period, two shillings while that of freehold grants was but one shilling for every fifty acres. At what time the exercise of those privileges began to decline it cannot well be ascertained. The act of Charles II. which abolished the military tenures must probably have given a shock to feudal customs in general, and the several suspensions of the Proprietary's political authorities in Maryland furnished good opportunity for inroads upon a system which must always have had fewer friends than enemies. By these or other means, the privileges and customs of Manors seem to have been gradually lost or disused. I shall aid this imperfect account by the insertion of a grant of a Manor at large and by such extracts and references as may tend to throw light on the subject, referring at the same time to what has been said on the article of tenure, from which, if we cannot ascertain with certainty what actually occurred in practice, we may at least obtain a sufficient idea of what was contemplated by the Charter, and pursued by the original Proprietary, as far as the temper and habits of his tenants would permit. That his theories and pretensions were frequently disputed, independent of the serious attacks made, in the mother country, and by rival governments in America, upon the very foundation of his rights, is demonstrated by various propositions and proceedings on record. The interruptions given to his authority by the events already notieed must also have effected the course of his designs, which it is fair, therefore, to conclude were never perfectly executed. The Charter authorised the creation of *titles of dignity*, but none were actually instituted, although, from some curious passages on record, it would appear that certain *personal* (*a*) *distinctions* were in view, but probably evaded by those, who being on the spot, knew better than the first Proprietary, who never visited the Province, how such things would be there received. With

(*a*) In a lengthy set of instructions from the Proprietary, Cecilius, to the Governor (his son) and Council, is the following article. "Item. "That you seriously take into your consideration to finde and speedily to "propose unto us some convenient way of and for the making of *some* "*visible distinction and distinctions* between you our Lieutenant General, "our Chancellor, principal Secretary, General Officers, Councellors. "Judges and Justices, and the rest of the people of the said Province, "either by the wearing of habits, medals, or otherwise."

all these deductions, real or presumed, the system of feudal tenure and manorial privileges continued in some degree of faint operation until, by the American revolution it was, with all other unnecessary subordination and dependence, swept away, it is hoped, forever.

" INSTRUCTIONS given by the Right Honorable Cæcilius Baltimore Asolute Lord and Proprietary of Maryland and Avalon to his Lieutenant of Maryland for the time being. His Lordship doth hereby authorize, will and require his said Lieutenant of Maryland to cause a Grant to be passed in his Lordship's name under the great seale of his said Province of Maryland to his dear son Charles Calvert Esq. and his heirs of the mansion house and Mannor of St. John's situate and being in the County of St. Maries in Maryland and containning by estimation one thousand acres more or less with all the appurtenances thereunto belonging to the uses hereafter mentioned (viz) to the use of the said Charles Calvert during his life and from and after his decease to the use and behoofe of his first son lawfully to be begotten and the heirs males of his body, and for want of such issue, then to the use and behoofe of his second son lawfully to be begotten and the heirs males of his body and for want of such issue then to the use and behoofe of his third son lawfully to be begotten and the heirs males of his body, and for want of such issue then to the use and behoofe of his fourth son lawfully to be begotten and the heirs males of his body, and for want of such issue then to the use and behoofe of his fifth sixth and all and every other son of the said Charles Calvert lawfully to be begotten and the heirs males of the body of such fifth sixth and all and every other sons lawfully to be begotten the one after the other as they shall happen to be in seniority of age and priority of birth, the elder and his issue male being always preferred before the younger and his issue male, under the yearly rent of two shillings sterling for every hundred acres therein contained to be paid to his Lordship and his heirs for the same.

" That his Lordship's said Lieutenant cause as much more land adjoyning to the said Mannor of St. John's (not yett assigned to any other person or persons) to be added to the said Mannor as he can, so as the whole Mannor doe not exceed in all above six thousand acres and to be erected by the said Grant altogether into a Mannor with Court Baron and Court Leet belonging to it with such other privileges and immunities as are belonging to any Mannor in England to be granted to the said Charles Calvert and his heirs in the

same Mannor and to the same uses as aforesaid, Provided always that a thousand acres next adjoyning to the said mansion house and now belonging to the said Mannor be sett out with certaine bounds and reputed hereafter the demesnes of the said Mannor, and that it shall and may be lawfull for the said Charles Calvert from time to time during his life to lett a lease or leases of all or any part of the said Mannor excepting the said mansion house and demesnes or any part thereof to any person or persons for one and twenty years or less or for one two or three lives or for any number of yeares determinable upon one two or three lives, so as there be a yearly rent reserved to the Lord of the Mannor of a penny sterling at the least for every *acres* soe to be leased as aforesaid, all which is to be inserted in the said Grant.

" That his Lordship's said Lieutenant cause also another Grant to be passed in his Lordship's name under his great seale of the said Province to the said Charles Calvert and his heirs, of the Mannor of west St. Maries situate and being in the said County of St. Maries in Maryland and containing by estimation two thousand acres more or lesse with all the appurtenances thereunto belonging to the uses hereafter mentioned, that is to say to the use and behoofe of his Lordship during his life and from and after his decease to the use and behoofe of the said Charles Calvert for and during his life and from and after his decease to the use and behoofe of the first son of the said Charles Calvert lawfully to be begotten and the heirs males of his body and for want of such issue to the use and behoofe of his second son lawfully to be begotten and the heirs males of his body and for want of such issue to the use and behoofe of his third fourth fifth sixth and all and every other *sonns* of the said Charles Calvert lawfully to be begotten and the heirs males of the body of such third fourth fifth sixth and all and every other *sonns* lawfully to be begotten, the one after the other as they shall happen to be in seniority of age and priority of birth, the elder and his issue male being always preferred before the younger and his issue male, and for want of such issue to the use and behoofe of the heirs males of his said Lordship and for want of such issue to the use and behoofe of the heirs males of his said Lordship's father George Lord Baltimore dec'ed, and for want of such issue to the use of the heires of the body of his said Lordship the now Lord Baltimore, and for want of such issue to the use and behoofe of the right heirs of his said Lordship for-ever.

" That his Lordship said Lieutenant cause as much more land next adjoyning to the Mannor of West St. Maries to be added to the said Mannor as he can, not assigned formerly

to any other person or persons, so as the whole Mannor exceed not six thousand acres and to be erected by the said Grant alltogether into a Mannor with Court Baron and Court Leet belonging to it and such like other priviledges as are belonging to any Mannor in England and to be granted to the said Charles Calvert and his heirs in the same manner and to the same uses as is mentioned in the next precedent article for the Mannor of West St. Maries, Provided always that a thousand acres of the said Mannor be sett out all together in the most convenient place of the said Mannor with certain bounds to be expressed in the said Grant for the demesnes of the said Mannor which shall ever after be reputed the demesnes of the same to be set out according to the best discretion of the said Charles Calvert, and that it shall and may be lawfull for his said Lordship during his life, and after his decease for the said Charles Calvert during his life, from time to time to grant any lease or leases of all or any part of the said Mannor excepting the said demesnes or any part thereof for any terme of years not exceeding one and twenty, or for one two or three lives or for any number of years determinable upon one two or three lives so as there be reserved upon every such Grant the yearly rent of one penny sterling for every acre contained in any such lease soe to be made, to be paid to the Lord of the said Mannor for the same.

" That when the said Grant of the Mannor of West St. Maries is passed as aforesaid his Lordship doth hereby further authorize will and require his said Lieutenant to cause a lease in his name to be passed under the great seal of the said Province of the said Mannor of West St. Maries with all the appurtenances thereunto belonging to the said Charles Calvert his executors and administrators for the terme of one and thirty years if his Lordship so long live and be absent out of the said Province under the yearly rent of two shillings for every hundred acres thereof to be paid to his Lordship for the same, Provided always that if his Lordship shall happen at any time during his life to come in person into the said Province of Maryland that then during such time as his Lordship shall be in the said Province it shall and may be lawfull for his said Lordship during his life and residence in the said Province to possess and enjoy the said Mannor of West St. Maries with all the appurtenances thereunto belonging as if noe such lease had been made from his said Lordship to the said Charles Calvert as aforesaid.

" That Whereas his Lordship hath appointed two Mannors at the least in every County of the said Province to be sett out for his Lordship's private use containing six thou-

sand acres a piece at least his Lordship doth hereby further authorize will and require his said Lieutenant that as soon as the said Mannor shall be soe sett out and the bounds thereof entered upon record in the Secretary's Office there which he wills and requires his said Lieutenant to cause to be done with all convenient speed and to call them by what names he shall think fitt that then he cause a demesne of a thousand acres or thereabouts to be sett out in every of the said Mannors with due meets and bounds entered upon record which shall be reputed ever after the demesnes of every of the said Mannors respectively, and that he cause a grant or grants to be passed in his Lordship's name under the great seal of the said Province of all and every of the said Mannors respectively to the said Charles Calvert and his heirs in the same manner and to the same uses and upon the same terms as his Lordship hath by the two last precedent articles of these instructions appointed for the granting of the Mannor of West St. Maries in the said Province of Maryland.

" That his Lordship's said Lieutenant cause another Grant to be passed in his Lordship's name under his said great seale of the said Province to the said Charles Calvert and his heirs and assigns for ever of tenn thousand acres of land royall mines excepted in any part of the said Province where he the said Charles Calvert shall make choice of not formerly granted to any other person or persons nor reserved for his said Lordship's private use and that he cause the said tenn thousand acres to be erected by the said grant into one or more Mannors and to be called by such name or names as he the said Charles Calvert his heirs or assigns shall desire with all such privileges and immunities as are most usually belonging to Mannors in England (royal mines excepted) under the yearly rent of four shillings sterling for every hundred acres to be paid to his said Lordship and his heirs for ever, for the same, Provided always that there be not less then a thousand acres in any of the said Mannors to be erected out of the said tenn thousand acres as aforesaid.

" For all which these instructions shall be a sufficient Warrant to his Lordship's said Lieutenant, who is hereby required to cause them to be entered upon record in the Secretary's Office in the said Province of Maryland.

" Given under his Lordship's hand and lesser seal at armes the twentieth September one thousand six hundred sixty five.

C. BALTEMORE."

LIBER No. 9, folio 506.

" May the first M D C L and V." (1665).

" Then came Jerome White Esq. and Surveyor General of this Province and requesteth that the Mannors reserved for his Lordship hereafter menconed may be entered on record as followeth, (viz.)

" In the County of St. Mary's reserved the Beaver dams and Choptico.

" In the County of Charles. Pangaio and Sackaio towns for six thousand acres in each Mannor of the best land about the said towns."

" In Calvert County. The Manor of Patuxent.

" In Ann-Arundel County. The Ridge with another Mannor reserved lying on the North side of the head of Severn River above a place called The Eagle's Nest.

" In Talbot County. One Mannor at the head of the South East branch of Chester river with another lying between the branches of Choptanck and St. Michaels and the head of Treadavon Creek.

" No land to be surveyed in Nanticoke river after the last day of April one thousand six hundred sixty five, but the whole river to be reserved till further order.

" To reserve a place lying on the sea-board side of the Eastern shore (for his Lordship's use) being formerly called Chingotecke now by the name of Mount Scarborough, by which place no land to be surveyed on each side for ten miles by the Water."

LIBER No. 7, folio 558.

" (16th April, 1670.) Ordered by the Surveyor General that none of his deputies lay out any lands upon Murderkill Creek in Delaware Bay until two Manors of 6000 acres each be first laid out for the Lord Proprietary; and that if any of them should through ignorance of the said order return Certificates of Surveys made there, the Clerk of the Office forbear to enter the same on record till further order."

LIBER No. 12, folio 476.

" Notice from the Surveyor General that all the lands whose water falls into any swamp, branch, or run of Patuxent river on the Eastern side thereof, being ten miles above Robert Tyler's, and all the lands whose waters fall into any part of the South West branch of Patapsco river above the falls thereof, are reserved for his Lordship's use, and no surveys to be made thereon without a particular order from the Governor." 26th July, 1673.

LIBER No. 15, folio 202.

" Jesse Wharton and Henry Adams appointed by the Governor to summon and examine such persons as well Indians as English as may be able to give testimony concerning the ancient reputed bounds of the Indian lands Pangaya and Zachaia, which had been surveyed and erected into Manors for the Proprietary and by which surveys " divers persons pretend themselves to be much injured." &c.

LIBER No. 17, folio 572.

—

" Order of the Proprietary (then in Maryland) for a Patent to Ephraim George Herman of a Manor on the Delaware called Augustine Manor the bounds of which are described in the said order—to be held by the yearly rent of Eight pounds sterling " *for the whole tract, let it contain what number or quantity of acres soever.*"

LIBER W. C. No. 4.

—

" In the behalf of his Lordship the Lord Proprietary of this Province you are hereby required to reserve for his Lordship's use the quantity of fifteen thousand acres of land if the same can be found together in one entire tract, otherwise no less than ten thousand acres, adjoining to a tract of twenty thousand acres lately surveyed for Charles Carrol Esq. in Prince Georges County, the same to be laid between such metes and bounds as may be most profitable to his Lordship and return your Certificate of Survey thereof into his Lordship's Land Office with all convenient speed, thence to be transmitted to the Examiner General for due examination and for your so doing this shall be your Warrant. Given under his Lordship's lesser seal at armes this eighth day of May Annoque Domi. 1718.

" *To his Lordship's Surveyor of*
Prince Georges County, These."

LIBER B. B. folio 81.

—

October 21st, 1727. " His Lordship being resolved " to re-survey his Manors in Somerset County lying on " Nanticoke River and on the head of Wiecomico River, " *Reserve* is therefore hereby made on all the contiguous " vacant land to the said Manors of which you are to take " due notice so as you are not to execute any Warrant what- " soever that may any ways affect such Manors or any of the " lands heretofore reputed to be the same.

" *To the Surveyor General of the Eastern*
" *Shore or his Deputy of Somerset*
" *County.*"

LIBER D. D. folio 227.

" *By the Governor and Council,*

" 16th of June, 1730.

" Forasmuch as it is represented to this Board that several persons have attempted to procure Warrants &c. to take up lands heretofore supposed to be Manor lands, and likewise lands already leased or otherwise reserved for his Lordship's use.

" It is the opinion of this Board that such lands ought not to be taken up by any person whatsoever, but be and remain to his Lordship as land reserved for his own use although not contained within the bounds of any of his Lordship's Manors.

" It is therefore ordered that no person or persons be permitted to survey or take up any such lands, and that a clause be inserted in all Warrants issuing out of the Land Office for the future, restraining the Surveyors from laying out any such land for any person whatsoever.

" And it is likewise ordered that no Warrants be located upon lands reserved or appropriated to the use of the Indians.

" JOHN ROSS, Clk. Counl.

—

" SIR,

" You are hereby required to enter the above order in the records of the Land Office for the better information of all persons concerned therein.

" Signed pr. Order, JOHN ROSS, Clk. Counl.

" *To the Hon'ble Philemon Lloyd Esq.*

—

" SIR,

" Whereas his Lordship, the Right Honourable the Lord Proprietary of the Province of Maryland hath Ordered to make a resurvey upon all his Honours, Manors, and Lands, and to enlarge the same, on both shores of this Province.

" I do hereby in the name and behalf of the Right Honourable the Lord Proprietary order and require that you forthwith cause a reserve to be entered for his Lordship on all vacant lands rough or cultivated, and on all lands that are or may become escheat or forfeit to his Lordship adjoining to any of his said Honours, Manors, or lands, or within the distance of three miles from them or any of them.

" And that you likewise acquaint the several surveyors within this Province thereof, that they may behave them-

" selves accordingly. Given under my hand this 28th day " of June Anno Domini, 1731.

BEN'DT LEON'D CALVERT.

" *To Philemon Lloyd Esq. Dep'ty Sec'ry*
" *of Maryland, THIS*

—

" In pursuance of the above order a Reserve is hereby " made for and to the use of his said lordship on all vacant " lands rough or cultivated, and on all lands that are " or may become escheatable or any ways forfeit to his " Lordship adjoining to any of his Honours Manors, or lands, " or within the distance of three miles from them or any " of them."

" *To all concerned.*"

LIBER E. E. folio 64.

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" *Mr. Lawson,*

" Enter a Reserve for his Lordship of all the Lands con- " tained within the bounds of his Lordship's Manor on " the north side of Severn River, in A. A. County which are " not already affected by the location of any Warrants and " by any Patent now in force.

" April 28th, 1733. EDM: JENNINGS.

April 28th, 1733.—" Pursuant to the above order from " Hon'ble Edmund Jennings Esq. Secretary of this Province " of Maryland and Chief Judge of his Lordship's land " affairs a Reserve is hereby made." &c. as before."

LIBER E. E. folio 301.

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" Orders by Daniel Dulany Esq. Chief Agent &c. for reserve of particular tracts escheated to the Proprietary."

LIBER E. E. folio 371—392.

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" Order from the same for Reserve of all the Cypress Swamp in Somerset County not taken up and half a mile round it."—July 4, 1734.

LIBER No. E. E, folio 432.

—

" Order from the same for reserve of 500 acres part of Portland Manor provided that Skipwith Cole who is acknowledged to have a right of pre-emption as being the discoverer that the said land is escheat does not purchase it to his own use. The land not to be surveyed for any person except the said Skipwith Cole without special directions from the Chancellor and Secretary—they being first apprised of this Reserve."

LIBER E. E. folio 470.

The following are the titles of the bills referred to relative to Manors: no copies of them, or of those sent in by the Proprietary are found on record, viz. a Bill for dividing the Province; a Bill for bounding of Manors; a Bill for assigning of Manors; a Bill for the order to be observed in the assignments; a Bill for the peopling of Manors; a Bill for the supporting of Manors; a Bill against aliening of Manors; a Bill for Baronies; a Bill for the assigning of Freeholds; and a Bill for the demesnes of the Lord Proprietary.

"Whereas certain lands and tenements holding of the Manors hereunder named have ceased for these three years last past, to pay the rent due to the Lord of the Manor hereunder likewise named, and the last tenants have (as is said) forsaken and deserted them nor can any distress be found upon the lands or the tenements for the levying of the said rent and arrears, These are therefore to summon the said several tenants to pay the said rent and arrears and the charges of this process unto the Lord of the Manor as aforesaid within 15 days after the setting up thereof, or else to be at the Court on the fourth of February next by themselves or attorney to shew cause why the said land should not escheat to the Lord of the Manor as aforesaid according to the law and custom of England in such case.

In the Manor of

St. Michael—One tenement of 100 acres late in the tenure of Thomas Butler deceased—yearly rent 2 barrels corn and 2 capons—arrear 3 years { 6 barrels corn / 12 capons.

St. Gabriel—One other tenement late in the tenure of Henry James, deceased, of the same quantity rent and arrear.

Trinity—One other tenement of 100 acres late in the tenure of John Langford deceased the same rent and arrear—One other tenement of 100 acres in the tenure of Robert Smith—the same rent and arrear.

LIBER No. 1, fol. 206.

This notice was apparently put up at the Court House—the name of the Lord of the Manor is not on the record—but these Manors were granted to Leonard Calvert. It is the only instance of the kind that has been discovered, which shews that the escheat claimed in this case for non-payment of rent

was not, in practice, at least, a right universally vesting in the owners of Manors. The next case is however of a still stronger nature as it exhibits a claim, on account of the same Manors, to forfeitures for rebellion. This is also the only instance observed of such a claim.

" At a Court held at St. Maries 7th December 1648, came " (*b*) Mrs. Margaret Brent and required the opinion of the " Court concerning the Patent of Mr. Leonard Calvert, in " the case of the tenements appertaining to the rebels within " his Manors, whether or no their forfeitures belonged to the " Lord of the Manors.

" The resolution of the Court was that the said forfeitures " did of right belong to the Lord of the Manors by virtue of " his Lordship's Conditions of Plantation, the said rights " usually belonging to the Lords of Manors in England; and " that the words in the Patent expressed, viz. *All commodi-* " *ties, advantages, emoluments and hereditaments whatsoever,* " (Royall Jurisdiction excepted) included the same."

LIBER No. 2, fol. 411.

In instructions from the Proprietary to the Governor and Council dated 29th September 1659 a question is stated to have been raised, " Whether *felons goods* are not included " in or under these words in a grant of a Manor (" profits " most usually belonging to Manors in England:") Lord Baltimore says that " Felons' goods are not profits either most " usually or at all belonging to any Manor in England by vir- " tue of its being a Manor, but is and must be granted by es- " pecial favour and special words, and is many times grant- " ed to *some* in other men's Manors."

An order of the Governor dated 18th April. 1674 directs new Patents upon several parcels of land in Panguiah Manor, the old Patents having among the tenures or conditions therein mentioned, one years (extra) rent to be paid every third

(*b*) This Lady was at once Attorney for the Lord Proprietary, in regard to his private estate and transactions in the Province, and administrator of Mr. Leonard Calvert, the first Governor, who died in the year 1648. She appears to have been very actively employed in taking up land, and in affairs of all kinds relating to property. Among other passages a little curious in the case of a person of her description, it appears on record that at an Assembly in 1647, where all the *freemen* had a right, and were summoned to attend, in person or by proxy as they thought proper, Mrs. Margaret Brent (a single woman, notwithstanding the addition of *Mistress*) came and requested to have a vote in the house for herself and another as his Lordship's Attorney. This was refused peremptorily by the Governor, *Greene*, and the Lady protested in form against all the proceedings of that Assembly unless she might be present and vote as aforesaid.

LIBER No. 2, fol. 289.

year " for and in respect of a (c) heriot," which condition is declared inserted by mistake of the clerk who drew and engrossed those patents, and is disclaimed by the proprietary. LIBER No. 15, fol. 175.

Extracts from instructions from the proprietary to William Talbot, Esquire, chief secretary of the province, dated September 8th 1670.

" Art. 6th. That whereas his lordship has heretofore " given several instructions to his governor and surveyor " general there to cause two manors at least to be reserved " in every county of the said province for his lordship's " use, each manor containing at least six thousand acres of " good land to be reserved in convenient places and so to be " forthwith entered upon record there in the secretaries office of the said province, his lordship doth hereby will and " require you to make strict search into all and every the said " records of the said office, and to take special notice and " recognizance of what manors are already so reserved, entered upon record, and to send his lordship a true copy of " the said record attested under your hand of such manors " as are already reserved as aforesaid as you shall find entered upon record there in the office.

" 7. That in case you find any part of his lordship's said " instructions therein not hitherto observed or performed " you do then immediately acquaint the governor and surveyor general therewith or any other of his lordship's officers there, to whom the speedy redress of such faults do " belong, and that you do often mind them and press them " to put the same in execution and that you send his lordship notice from time to time what is or shall be done therein.

" 8. That you use all possible means to find out all such " lands or manors having been formerly reserved for his " lordship's use as are not as yet entered upon record, or if they " be are notwithstanding improperly entered for want of distinct " names and bounds assigned unto them, or the quantities of " acres they contain. You are therefore in such cases hereby required to cause all such manors reserved for his lordship's use to be named, bounded, and the quantity of acres " they contain to be ascertained by his lordship's governor " and surveyor general or his deputy or deputies there, " and to be entered upon record in your said office, and to

(c) A feudal custom of Danish origin, commonly attached to copyhold estates. It consists most generally of a tribute of the best horse or other beast, or the best piece of plate &c. of the party, payable at his death.

" send a true copy of all such records of the said manors un-
" to his lordship attested under your hand, and likewise to
" give his lordship particular notice from time to time of
" their proceedings as well as your own therein."

COUNCIL BOOK, C. B. fol. 51.

" Cecilius, &c. Know ye that for and in consideration that our dear brother Leonard Calvert Esq. our lieutenant general of our province of Maryland hath done unto us many acceptable services and sustained much hazard and charge in reducing the isle of Kent under our government, have therefore of and with the advice of our said dear brother and at his humble motion and request given granted enfeoffed and confirmed and by these presents for us and our heirs doe give grant enfeoff and confirm unto our right faithfull and beloved councellor Giles Brent assignee of our said brother, all that neck of land lyeing nearest together about Kent Fort in the said isle of Kent, bounding upon the west, east and south with Chesapeak bay, upon the north with a line drawn through the woods straight east from the northeastermost branch of the creek called North West Creek unto a swamp in the said bay on the east side of the said neck, containing by estimation and now set forth for one thousand acres be it more or less, and all woods, quarries, mines (royal mines excepted) waters, royal fishes, fishings, fishing places, advowsons and patronages of churches, wrecks not claimed by the owner within a year and a day, waifes, strays, felons' goods, free warren, liberty of hunting hawking and fowling for any sort of game whatsoever, and all other profits advantages comodities emoluments and hereditaments in or upon the same or any part thereof saving to us and our heirs, our royal jurisdiction and seigniory as absolute lords and proprietors of the said province of Maryland, and saving unto Giles Basha and Thomas Allen their heirs and assigns their freeholds granted or to be granted to them, which nevertheless we will that they and either of them hold of the said Giles Brent and his heirs, paying the rents and performing the services for the same unto our said brother in such manner as the same ought to have been paid unto us or our heirs: To Have and To Hold the same unto him the said Giles Brent and his heirs forever, To be holden of us and our heirs as of our honour of St. Maries in free and *comon* soccage by fealty only for all services, yielding and paying therefore yearly to us and our heirs lords and proprietaries of the said province at the place where the mill now standeth two barrells of good corne at the feast of our Lord's nativity, and we will and appoint that the said parcell or neck of land shall

from henceforth be one entire mannor, and be called by the name of " The mannor of Kent Fort," AND that 300 acres of the same shall be forever hereafter accounted and known for the demesne lands of the said mannor and shall be set forth by distinct meates and bounds for that purpose, and that the said Giles Brent and his heirs may at all times hereafter grant or convey any other part of the premisses (excepting the said 300 acres) unto any other person or persons of British or Irish descent either in fee simple or fee taile for life lives or years to be held of him the said Giles Brent and his heirs as of his mannor of Kent Fort, by and under such rents and services as he or they shall think fitt, And further We Do for us and our heirs give and grant unto the said Giles Brent and his heirs forever, that he and they shall and may have hold use and enjoy within the said mannor one court in the nature of a *court baron* and in that court hold pleas of all and all manner of actions suits trespasses quarrells debts and demands whatsoever happening or arising within the said mannor which in debt or damages doe not exceed the sum of forty shillings of lawful English money to be from time to time held by the said Giles Brent or his heirs or his or their steward from time to time to be appointed and by the free suitors of the said mannor; And further shall and may forever hereafter twice in every year viz. in the month after Michaelmass, and the month after Easter have hold and enjoy a *court leet* or view of frank pledge, and all that to a court leet or view of frank pledge doth any ways belong or appertain To be holden of him and them and by his or their seneschall or steward from time to time by him and them to be appointed, and therein to enquire of all crimes and offences committed or to be committed within the precincts of the same mannor, which may or ought by the law or custom of England to be enquired of in any court leet or view of frank pledge within the realm of England and to his and their own use to have and receive all and singular issues profits fines amerciaments and perquisites whatsoever which hereafter shall or may arise or come by reason of the said courts or either of them. Given under our great seal of our said province at our honour of St. Maries the seventh day of September Anno Dni. 1640—Witness our dear brother &c.

LIBER No. 1, fol. 48.

CHAPTER VI.

OF THE FORMAL AND DISTINCT ESTABLISHMENT OF THE LAND OFFICE.

DURING the life of the original proprietary, which embraced a space of forty-three years from the date of the charter, *land affairs* were under the direction of his lieutenant or governor, with an irregular kind of participation in the secretary, the surveyor general and the council, to say nothing, at present, of an occasional legislative interference. Throughout this period it is not perceived that the management of those affairs had been regulated by any prescribed rules or instructions, further than may be gathered from the conditions of plantation, proclamations and special directions which have already been noticed. It cannot indeed be positively asserted that no set of rules had ever been prescribed, for there was in existence in the year 1680 a record termed the "Book of instructions" which is not now to be found; but the contents of that book may very well have been those instructions which directed particular things to be done, such as the making reserves, laying out manors, &c. which are numerous, and some of them very lengthy. Supposing, what I conceive most probable, that distinct instructions for the proceedings of the land office, and for that purpose only, had not been prescribed, it may be accounted for by the circumstance of the government's having been generally in the hands of the proprietary's near relations, and for many years in those of his son and heir Charles Calvert, in whom it is reasonable to suppose that a discretion was vested that would not have been accorded to a stranger; and it may be still more clearly accounted for by the circumstance that there was no office and no tribunal absolutely set apart for affairs of land, to which instructions confined to that object, might have been addressed. About ten years after the death of Cecilius lord Baltimore, which took place in 1675, his successor, just mentioned, who had since his accession made a visit to England, and was about to go a second time, determined, previous to his departure, to commit the sole management of land affairs to a select council consisting of four members, and termed "the land council" or more formally "his lordship's council for lands specially appointed." Four years before this he had for the first time erected a *land office* by that name, and given the charge of it to John Llewellin, by the denomination

of register. Upon the appointment of the land council he caused to be prepared a set of instructions, intended to embrace all the operations of the land office, and from this time the complete and distinct organization of this establishment takes its date. The whole proceeding is here inserted, beginning with what appears first in course, to wit, the transfer from the secretary's office to Mr. Llewellin (who was, it would seem, appointed register, but not yet commissioned) of all those record books and papers which related to the business he was to have in charge.

—

" A list of the records of lands taken out of the secre-
" tary's office for which John Llewellen, register appoint-
" ed for the land office passed his receipt the 7th of April
" Anno 1680, according to his lordship's order of the 3d
" ditto in the words underneath the said list."

LIBER C. B. fol. 1.

Here follows the list, which I do not insert because I have not sufficiently weighed, or been advised concerning the consequence of exposing in this publication any thing that may relate to the loss of records, respecting which, questions are frequently raised in the courts of justice.—It is a matter, likewise, which, notwithstanding several attempts, I have not yet fully investigated. But although the books transferred at this period to the newly erected land office are not all found or (*a*) accounted for, I have seen no chasms in the present records sufficient to *convince* me that losses of *records* essentially injurious to titles of property in Maryland have occurred.——After the list comes the following order.

" You are desired and hereby required to deliver into the
" custody of John Llewellin to be kept at the state house the
" several books and papers in your office relating to the bu-
" siness of lands according to the within written list, and
" what other books and papers you have any ways relating
" thereunto, for which this shall be your sufficient order from

" C. BALTEMORE.

" *To the Hon'ble Wm. Calvert, Esq.*
" *principal sec'ry of this pro-*
" *vince or his chief clerk. These*"

—

" C: BALTIMORE.

" MARYLAND *ss.*

" Charles absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltemore &c. to all persons to whom these presents shall come greeting in

(*a*) By being transcribed.

our Lord God Everlasting: Know Ye, that WE reposing special trust and confidence, in the great care truth fidelity and circumspection of John Llewellin of the county of St. Maries within this our said province of Maryland, and for divers other good causes and considerations us thereunto mooving have ordained constituted and appointed as by these presents Wee Doe hereby ordaine constitute and appoint the said John Llewellin to be clerk and register of our land office within this our said province, by us for all matters relating to land specially and particularly now lately erected and appointed, Hereby authorising and empowering the said John Llewellin as register to take into his care and charge all and singular the records transcripts, bookes papers and memorandums whatsoever to the same belonging or in any wise appertaining giveing also hereby full power and authority to our said clerk or register to take the probate of all rights for land due to any person or persons inhabiting resideing in or tradeing into this province (according to the conditions of plantations by our deceased father Cæcilius &c. of noble memory published and set forth and remaining upon record within our said office) as shall from time to time and at all times hereafter be brought and tendered to him for that purpose, and upon due proof thereof made to issue out and singne warrants, and upon returne of the certificates thereof to draw pattents for the same as is usuall keeping a true and perfect record of what shall by him be done and perpetrated by vertue hereof in the execution of his said office, and in all things to act doe and perform as to the said place and office may or of right ought to be done, according to the *condicons* of our deceased father Cæcilius &c. as aforesaid, or such other conditions as shall by us from time to time and at all times hereafter be set forth and published within this our said province and according to such further orders instructions and directions as he shall from time to time receive from us or our lieutenant general or other chief governor for the time being. Provided alwaies that noe special warrant, warrant of resurvey or other special matter whatsoever relating to land as aforesaid shall be issued out but by speciall order from us or our lieutenant general or other chief governor as aforesaid, any thing to the contrary before mentioned notwithstanding. To Have and to Hold the said place and office of clerk and register of our land office to the said John Llewellin for and during our pleasure. Given under our hand and lesser seale at armes the nineteenth day of April in the fifth year of our Dominion &c. Annoq Domini 1680."

LIBER C. B. folio 24.

(*b*) " His lordship moves the advice of his council concerning some instructions to be left with a particular council his lordship designed to constitute in his absence to hear and determine all matters of land and acts of grace and favour therein.

Whereupon, Resolved and ordered, that the clerk of the council make inspection into former precedents, and make report to this board what hath been usually heretofore done in such cases ; and also prepare a commission for such a council to be assigned by his lordship distinct from the council of state, his lordship having nominated the hon'ble Col. Henry Darnall, Col. William Digges, major Nicholas Sewall and John Darnall, Esq. his lordship's councellors thereunto assigned."

LIBER R. R. R. fol. 85.

Commission for Land Councill.

" C: BALTEMORE.

" Charles absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltemore &c. To all the inhabitants of this our province of Maryland and others to whom these presents shall come or may concerne Greeting: Know ye that We have assigned constituted ordained and appointed, and by these presents We doe especially assigne constitute ordaine and appoint our trusty and well beloved councellor colonel Henry Darnall, our trusty and well beloved councellor colonel William Digges, our trusty

(*b*) Lord Baltimore was at this time on the point of going to England, and made new arrangements in all the departments of his government. His son Benedict Leonard Calvert, a minor, was appointed governor, but, in the same commission nine persons were appointed *Deputy governors* " *under him*" as the commission expresses it, but in fact for the purpose of conducting the administration, and guarding the proprietary's interests and authority within the province where they were in great jeopardy, while he, upon ground equally urgent, attended to the same thing in England. His fears were just and his precautions useless. In the space of five years, having first submitted to the loss of a part of his original territory (the present state of Delaware) he was deprived of all political power, and left in possession of nothing but his right in the *soil* of Maryland, as will hereafter appear more at large. The persons so appointed deputies, and some of whom had, at the crisis just alluded to, a part of great difficulty and peril to sustain, were colonels *George Talbot*, Thomas Taillor, Vincent Lowe, Henry Darnall, William Digges, William Stevens, and William Burgess, major Nicholas Sewall and Mr. John Darnall. The first named of these, who was at the same time surveyor general, and a member of the privy council, is noted in the history of the province for the murder committed by him, soon after this appointment on Christopher Rousby collector of the customs ; of which this notice is taken because some alledged agency in screening colonel Talbot from justice was among the grounds or pretexts for depriving the proprietary of the governmental rights conferred by the charter."

and well beloved councellor major Nicholas Sewall, and our trusty and well beloved councellor John Darnall Esq. to be of our especiall and select councill for us and in our name to heare and determine all matters relating to lands as shall be duely brought before them by any the inhabitants of our said province, our others sueing for acts of grace and favour therein: hereby also ordaining that they the said colonel Henry Darnall, colonel William Digges, major Nicholas Sewall, and John Darnall Esq. or any three of them shall be a sufficient and compleate councill for the hearing and determineing the matters aforesaid. Giveing and granting hereby unto the said colonel Henry Darnall, colonel William Digges, major Nicholas Sewall, and John Darnall Esq. or any three of them as aforesaid full power and authority to sitt and hold councill when, where, and as often as to them shall seem meete for the end and purpose aforesaid, and to grant to the inhabitants of our said Province and other suitors in such cases, such favours benefits and priviledges as have been usually given and condescended unto by us in councill, according to such orders instructions and directions as We have already given or shall hereafter think fitt and necessary to give unto them: Hereby ratifying confirming and allowing for firme good and valid whatsoever shall be done or granted by our said councill pursuant to their said instructions, as fully amply and largely to all intents and purposes as if immediately done by Ourself or that Wee were personally present at the doing thereof. This commission to countinue for and dureing our pleasure: Witness ourself at Mattapony Sewall this fifth day of May in the ninth year of our dominion &c. Annoque Domini one thousand six hundred eighty and foure.

LIBER R. R. R. fol. 93.

Instructions for the Land Councill.

" C. BALTEMORE.

" Instructions powers and authorities given by the right honourable Charles lord Baltemore lord proprietary of this province &c. to the honourable colonel Henry Darnall, colonel William Digges, major Nicholas Sewall, and John Darnall Esq. councellors particularly and especially appointed and assigned for the hearing and determining all matters and things for and concerning lands (viz.)

Imprimis. Lands escheatable for want of heirs, non payment of rent, or otherwise, at the request, costs and charges of any person or persons suitor or suitors in that behalf adjudged and condemned unto us in due forme of law, you may and have hereby full power and authority for us and in our

name, to give grant lease or otherwise dispose of to such person or persons suitor or suitors as aforesaid, or others whom you shall think fitt, upon such conditions and tearmes as to you shall seeme meete and convenient with due regard had to the nature quantity and quality thereof.

2. Any error or mistake in the clerk of the office or surveyor in returne of certificates, entering upon record, or variance between the originall and record, or certificate and pattent, you may (upon due proofe or other undeniable circumstances made appeare) by your order to the justices of our provinciall court in court sitting cause to be corrected, rectified and amended, in the certificates, pattents, records and originalls aforesaid as the case shall require.

3. To any person or persons haveing two three or more tracts of land contiguous or adjoineing one to the other, you may (upon suite made) grant speciall warrant to resurvey and lay out the same into one entire tract with liberty of takeing in or adding thereunto what waste land shall be found contiguous, and grant pattent for the same upon such conditions and tearmes as to you shall seem meete and reasonable, the person sueing for the same surrendering up the several former grants thereof to our chancellor or chancellors for the time being to be vacated upon record.

4. To ascertain the meetes and bounds of any lands adjoining to a former or more ancient survey, you may upon suite made grant speciall warrant, at the cost and charge of the petitioner first to resurvey and lay out the land of more ancient survey, and then (if it shall be required) the land of the petitioner according to the due courses meetes and bounds in the pattents thereof mentioned and expressed.

5. Where there shall be wanting any quantity of land granted by pattent, and the pattentee or lawful owners and possessors thereof shall apply themselves to you for redress you may cause speciall warrant to issue for the resurvey thereof with liberty of making good the full due complement upon waste land contiguous, or elsewhere within the province, not intrenching upon any former or more ancient survey or reserve for us made; and where through the error negligence or mistake of the surveyor any greater quantity than by patent is granted shall appear to be contained within the bounds thereof you may and are hereby directed to grant the surplusage to the pattentee or other lawful owner or possessor thereof aforesaid before any other person upon conditions and tearmes as to you shall seem meete, such pattentee owner or possessor aforesaid sueing for the same in any reasonable time. The words (more or less) in every grant alwaies to be held esteem-

ed and taken to amount to tenn in the hundred over or under and no more.

6. Rent for land not paid in several yeares (especially where orphans are concerned) or otherwise upon sufficient motives thereto inducing, you may and have hereby power and authority given you to accept of, in ready money if tendered, bills of exchange, or otherwise as to you shall seem meete.

7. The lands of an alien not naturalized escheating to us, you may and have hereby power given you (upon condemnation) to dispose of to any person or persons suitor or suitors for the same, upon such conditions and tearmes as you shall think fitt with respect to the nature, quality and quantity thereof wherein you are to consult our most benefit and advantage.

8. Pattents of exemplification may at request be granted to any person or persons sueing for the same, where the originalls by fire or other accident have been destroyed or lost.

9. Alwaies upon supplication to you made, admitt of caveat in behalf of orphans to be entered against the resurvey of land to them belonging to be made by any other person for discovery of the surplussage; which we will in all cases to be afforded to the orphans before any other, upon such conditions and tearmes as you shall think fitt and reasonable.

10. Where two or more persons shall be equally concerned in, or have right to any tract or tracts of land, and shall jointly desire a speciall warrant to resurvey and equally divide the same betweene them by the direction of a jury of the vicinity or otherwise, you may in such case, and have hereby power given you upon such request made grant such warrant as is desired.

11. Where it shall be discovered or made known unto you that any grant or pattent hath heretofore been illegally or surreptitiously obtained; or if any pattent shall at any time hereafter be so obtained, you may and are hereby required to order scire facias to issue forth of our chancery court of records, to the pattentee or other present owner and possessor thereof, to shew cause why the same should not be vacated: And if the said land shall be adjudged and condemned unto us for the reasons aforesaid, you may by letters pattents or otherwise give grant or dispose of the same to the discoverer thereof or other person or persons suitor or suitors to you for the same, upon such conditions and tearmes as to you shall seeme meete.

12. Upon the death or removal of the surveyor generall, (to whom or his deputies all speciall warrants have been and are to be directed) want of convenient time, or other speciall occasion happening and evidently appearing, you may cause and give order for the renewing or continuing of any speciall

warrant, warrant of resurvey or other order of councill, as the case shall require.

13. Any person or persons takeing up upon conditions of plantation performed or upon speciall or conditionall warrant from us or our councill duly obtained, any tract or quantity of land falling within a former survey or reserve for us made, may upon supplication have warrant granted him or them to make good the like quantity upon other waste land in any part of the province.

14. Conditions of plantation performed, and by the carelessness, negligence or ignorance of the clerk of the office omitted to be duly entred upon record, may (upon due proof made, and other undeniable testimony to you appeareing) be ratifyed, confirmed, approved, and made good by your order to the benefitt of the party concerned.

15. Noe advantage shall be taken by lapse of time in sueing forth pattents for land upon conditions of plantation in all respects otherwise performed, where it shall appeare that the same has happened by default of the clerke of the office, negligence of the surveyor or ignorance of the party concerned, and in reasonable time taken notice of, and sought to be redressed. And in case the same shall happen (through the defects aforesaid) to be omitted dureing the life of the party aforesaid, you may then upon suite made, cause the speedy entry thereof and grant pattent for the same to the next heire or relation of the deceased; or for want thereof to the executor or administrator of such deceased, to be as assetts for the satisfaction of his debts and legacyes, or otherwise as you shall see fitt, upon such conditions and tearmes as to you shall seeme meete; our rents and arrearages of rent for the same being duly paid and satisfied.

16. You are by no means to grant or pass any pattent for any tract of land that is part or parcell of a greater tract formerly granted.

17. Upon resurvey of severall smaller tracts into one intire tract upon some doubts of error or mistake made by the surveyor or clerk of the office (evidently appearing soe to be) you may rectifye the same by patent of confirmation thereof such error or mistake aforesaid notwithstanding.

18. All certificates of resurvey upon speciall warrant granted in councill lett be returned first to the examiner generall and then to the councill, before such time as they be admitted to be entered upon record in the office.

19. And wee will and require and doe hereby give full power and authority to you the said coll. Henry Darnell, and coll. William Digges in case you shall be both living to signe all pattents and grants of land legally obtained, and other instruments to which the great seale is necessary or re-

quired, during our absence out of this province, and soe long as wee shall think him fitt to continue the powers and authorities to you by us given, and in case of the death or absence of either the said coll. Henry Darnall or coll. William Digges, then wee will that all pattents and grants of land, and other instruments aforesaid shall be signed by either the said Henry Darnall or William Digges and one of our secretaries major Nicholas Sewall or John Darnall Esq. to be good firme and valid in law to all intents and purposes as if immediately signed by ourself: Unless such pattent grant or instrument aforesaid shall immediately concern or have particular relation to you the said Henry Darnall or William Digges; in which case wee will that such pattent grant or instrument aforesaid shall be signed by the other of you not concerned, and one of the secretaries aforesaid, and soe accordingly where the same shall concerne either of our said secretaries.

20. And wee doe hereby authorize and empower you the said major Nicholas Sewall and John Darnall Esqs. our principall secretaries of this our province jointly or severalrally by yourselves apart to signe all warrants, warrants of resurvey or other speciall warrants for land or other instrument to your place and office belonging by both your names to be affixed by either of you present and attending in your office for the time being; such warrants and speciall warrants aforesaid being legally obtained upon conditions of plantation, or by order of councill in manner aforesaid: And alsoe upon due examination of all common ordinary or speciall and extraordinary pattents with the originall and records of the certificates, you and either of you the said major Nicholas Sewall and John Darnall Esq. attending may and have hereby liberty given you to attest such your examination by both your names on the back of the said pattents, to be attested also in the first place by the surveyor generall of this province as agreeing with and being according to a just survey thereof made.

21. Upon the expiration or other determination of any lease or other title to land of and within any of our mannors within this province, we doe authorise and empower our said trusty and well-beloved councellors herein before named to renew the same to the tenants or inhabitants thereof for and during the space and tearme of five years longer, upon such tearmes and conditions as the same was formerly granted, with a fine to be paid therefore.

22. And forasmuch as all or most of the severall concessions and condescensions in the severall articles herein before contained are matters of grace and favour, we will and require that for the encouragement of the clerk of our coun-

cill for the time being, and to enable him to continue his fidelity, industry and diligence in his constant attendance and employment in the said office, upon every grant of land escheated unto us upon any the reasons aforesaid, the party obtaining the same doe (besides his ordinary fees already settled upon him by us and our councill for petitions &c. the attorney generall's fees and other officer's fees) pay and secure to be paid unto our said clerk the just quantity of four hundred pounds of tobacco, and also upon the grant of any surplussage to any person or persons suitors for the same in manner aforesaid obtained the sum of ten pounds of tobacco in every hundred pounds of tobacco the value bargained for, and agreed to be paid for the same shall by the party obtaining be paid unto our said clerk over and above the value bargained for and agreed on as aforesaid.

23. And for any other matter or thing which of our grace and favour wee have usually granted and condescended unto, and not herein before expressly mentioned and contained, Wee will and do hereby give unto our said councellors full power and authority to give grant and consent unto, in such manner and forme as we have heretofore done by and with the advice and consent of our privy councill of this our province: *Provided* such grants and acts of favour to be by you made and passed in manner aforesaid infringe not too much upon our prerogative or be too much injurious or prejudiciall to our owne interest, rights and property, to which we will that due respect, be upon all occasions had and made.

Given at Mattapony Sewall under the greate seale of our said province of Maryland the fifth day of May in the ninth yeare of our dominion &c. Annoque Dom. one thousand six hundred eighty and four."

LIBER R. R. R. folio 93.

The conditions of plantation, proclamations and instructions that have hitherto been inserted are those only which were issued by the original proprietary. From circumstances in the history of the province, and from incidents relating personally to the successive proprietaries, I have, without at first designing any such arrangement, been led to consider the entire duration of the provincial government as divided into three periods;—the first ending with the death of Cecilus lord Baltimore in 1675; the second with that of his son and successor Charles in 1715; and the third reaching to the American revolution in 1776. The proceedings which have just been exhibited belong of course to the second of those periods, but they form only a part of the system of the new proprietary. Whether the original

method of taking up land by *rights of transportation* was really liable to the frauds, abuses, and difficulties which this proprietary discovered in it, or that he was impatient of a system that brought no immediate profit, and began to be unnecessary, he soon resolved upon an essential alteration in the terms on which lands were obtainable by adventurers, and stopping the receipt of any further proofs of rights accruing from the mere act of coming into the country, he demanded by new conditions of plantation a price in money or its representative, tobacco, for the immediate purchase of land, besides a perpetual quit rent as theretofore. Without commenting upon this and other changes introduced at the same epoch in the management of land affairs, I shall insert here, in the course of their dates, all the conditions of plantation and other documents of importance that fall within the period under consideration. The chasm which will be found in them after the year 1704 will presently be accounted for in an additional historical sketch anticipated in some degree by the last note attached to this Chapter.

" BY THE LORD, AND PROPRIETARY.

" PROCLAMATION.

" Whereas by the conditions of plantation formerly from time to time published within this province by our dear father of noble memory, all adventurers into this province claiming any lands within this province for or in respect of their transporting themselves their wives children or servants into this province did and do stand obliged to make their claim to and demand a pattent for all such lands within one year next after such lands did or should from time to time become due: and whereas for the ease and benefitt of all adventurers into this province his lordship's governors have heretofore commissionated divers persons, surveyors and others to take the claims prove the rights and thereupon grant warrants for surveying of land according to the said conditions; with express commands, notwithstanding, to return such their proceedings into the secretaries office there to remain upon record: and forasmuch as the said persons so commissionated as aforesaid have either neglected to make returns as they by their commissions were commanded or the clerks at the secretary's office have neglected to enter the said returns by which the titles of divers of the said adventurers to their land are dubious and questionable and may hereafter be questioned to the great prejudice of the inhabitants of this province in after times where things of this nature cannot be made appear. We by the advice of our counsill willing to settle the minds as well as the posses-

sions of all the good people of this province do hereby publish proclaim and declare that we will not take advantage of any lapse of time either in proveing rights returning of certificates or demanding grants or pattents of any lands heretofore become due to any adventurer or planter within this province provided such adventurer or planter their heirs or assignes do within two years next after the date of these presents make out and prove their former right title and claim to any such lands and sue out their pattents as the case shall require, and whereas divers adventurers into this province have formerly taken up and surveyed severall quantities of land within this province and afterwards upon some dislike the same have lett fall and made use of their rights in other parts of this our province after which either adventurers not knowing of such former surveys have for themselves surveyed and taken up the same lands being rough and uncultivated by which their titles to the said land are doubtfull we do further hereby publish proclaim and declare that we will not take advantage of any such former surveys nor of the common words in all warrants of survey viz. " not formerly surveyed or taken up" and hereof we strictly charge and command our chancellor, secretary and all other our judges of this our province to take notice. Given at St. Maries under the great seal of our province of Maryland this third day of June in the first year of our Dominion Annoque Dom. one thousand six hundred and seventy six."

LIBER No. 19, page 459.

Att a Councill held at St. Maryes the 24th day of June Anno Dom. 1677.

Whereas the governour and councill are informed that there are severall persons that are seated within this province on the sea board side and doe pretend to be under the government of New York. Itt is therefore ordered that a special warrant be granted to Mr. Wm. Stevens for eight thousand acres of land to be proportioned out by him for the encouragement of such as will seat there on the said sea board side, and that such persons as seat there shall have seven years liberty to make good rights for the said land, paying to his lordship only the rent of two shillings sterling yearly for every hundred acres. And further it is ordered that those that seat nearest the Hoarkills shall have out of the said eight thousand acres one thousand acres of land for a family, having in it three working hands att the least and the rest of the eight thousand acres to be proportioned out at five hundred acres each family having in it two working hands at the least, pro-

vided such as intend to seat there shall settle betwixt this *tyme* and the last of November next and there build and not desert their plantations. And it is further ordered, that at the return of colonel Henry Coursay from New York a letter be sent to the governour of New York to know whether those persons who have incroached upon his lordship's province doe own him for their governour, that there may be a right understanding betwixt the two governments.

LIBER, R. R. folio 122.

BY THE GOVERNOUR.

Whereas William Stevens of Somersett county hath humbly prayed that those persons of Somersett county that have pattents to sue out according to his lordship's declaration in June Anno Dom. one thousand six hundred seventy six which time therein limitted is now expired, and yet there being some persons in the said county that have occasion of his lordship's grace and favour therein expressed but was prevented attending the secretary's office by reason of the late troubles with the Indians in those parts (and that is happily blown over) other urgent occasions in their cropps hindering also; for the better encouraging the settling of the sea side and other parts of the said county I do hereby order that the inhabitants of the said county shall have eight months time commencing from the date hereof to sue out their pattents according to his lordship's gracious declarations as if they had done it within the time limitted provided he or she that claims the favour of this order, do bring a certificate to the secretary's office at Saint Marys under the hand and seal of William Stevens of the said county that they are persons that deserve his lordship's favour. Given under my hand and lesser seal of the province the fourteenth day of June in the third year of the dominion of the right honourable Charles over Maryland &c. Annoque Domini one thousand six hundred seventy eight.

(L.S.) THOMAS NOTLEY.

To the hon'ble William Calvert, Esq. princip'l secratary of the province of Maryland.

LIBER, No. 19, fol. 636.

BY THE LIEUTENANT GENERAL.

A PROCLAMATION.

Whereas the right honourable the lord proprietary of this province by his gracious proclamacon bearing date the third day of June in the first year of his lordship's

dominion &c. Anno Domini one thousand six hundred seventy six, by the advice of his lordship's councell did publish proclaime and declare that his said lordship would take no advantage of any lapse of tyme either in proving of rights returning of certificates or demanding grants or patents for any lands due to any adventurer or planter within this province: Provided such right title and claime to any such lands be proved and patents sued out for the same within two years after the date of the said proclamacon. And whereas severall persons inhabitants of this province have informed me, that by reason of the late troubles with the Indians, and other urgent occasions in their cropps hindering, they could not attend the secretary's office for sueing out their patents and making good other defects in the lapse of tyme as to the return of certificates and making good rights, and humbly prayed eight months tyme more for the doeing thereof. Being willing to comply with the reasonable request of the said inhabitants and for the settling their mindes and estates, I doe hereby (by and with the advice and consent of his lordship's councell) publish proclaime and declare, that no advantage shall be taken of any lapse of tyme either to the sueing out of patents for land or other defects whatsoever in any inhabitant of this province, but that all such inhabitants shall have and are hereby allowed eight months tyme commencing from the date hereof for the effectual doeing the same. Given att the citty of Saint Marys under the great seal of the said province of Maryland the nineteenth day of June in the third year of his lordship's dominion &c. Annoque Domini, 1678.

LIBER R. R. fol. 164.

" You are hereby willed and required forthwith upon receipt hereof, to desist from prooveing or receiveing into the office the probate of any rights, or issueing out any warrants for any rights, but what are already and before the date hereof returned unto and recorded in the land office. But for the future any person or persons desireing to take up land within this province, you are to grant to him or them warrants for what quantity of land they shall desire, at the rate of one hundred pounds of tobacco per fifty acres; to be laid out in any part of this Province, except at the heads of the rivers on the Eastern Shore, the sea board side and the Whorekills, which shall be granted to any person adventurer or others desireing the same at the rate of fifty pounds of tobacco per fifty acres, and the usuall rent of four shillings per hundred acres according to the conditions of plantation last in force; paying also your fees of twelve pence sterling for drawing

bill for payment of the tobacco as aforesaid, wherein you are to be very cautious and circumspect, that you accept of none but responsible persons (soe neare as you can) to become purchasers or sureties for them that shall desire the same. For all which this shall be your sufficient warrant—Given under my hand at Mattapony Sewall the second day of February in the eighth yeare of our dominion &c. Annoque Dmi. 1682."

C. BALTIMORE."

To John Llewellin Clk. of the land office. These

LIBER W. C. No. 4, fol. 299.

—

" The councill order proclamation to issue to certify all people, that if they are any way prejudiced or damaged by the miscarriage of the deputy surveyor if they doe not seek for reparation in six months time after such miscarriage is committed, the person that is so prejudiced to be left remediless against the surveyor generall or his deputys, six months from the date of this proclamation for what is already done and six months from the time that the injury is done afterwards."

LIBER R. R. fol. 16.

—

" Ordered that all inquisitions returned upon writts of mandamus issued forth of the chancery court of records by order of this board, be by the hon'ble the secretarys (after reading in the provinciall court) returned unto this board for their perusall and further order therein."

LIBER C. B. No. 1, fol. 25.

—

" His lordship having returned him from his collector in Talbot county, that none of the bills passed by the inhabitants there for warrants upon conditions of plantation last in force, could be received this yeare. It was ordered that their pattents should be stopp'd untill the same were paid, and that precept issue to the secretarys accordingly (viz.")

March 12th, 1683.

" *By the Lord Proprietary and Councill.*

" Ordered that noe pattents for land taken up by or for any the inhabitants of Talbott county upon conditions of plantation last published, be delivered out of your office, untill such time as the persons claymeing or demanding the same shall make it planely appear by receipt or other suffi-

cient proofe that they have paid and satisfied unto his lordship or his collector for the same according to the said conditions."

Signed, per order, J. LLEWELLIN, Cl. Council."

To the hon'ble the Secr'ys. of this Province—(These.)

March 12th, 1683.

LIBER C. B. fol. 31.

By the Lord Proprietary and Councill.

" Granted that all persons sueing forth any warrants for land upon conditions of plantation last published or hereafter to be published, have twelve months time allowed them for the laying out thereof, and that all warrants thereupon already granted be renewed accordingly to make good the same."

Signed per order, J. LLEWELLIN, Cl. Council."

To the hon'ble the Secretarys of this Province.—(These)

LIBER C. B. No. 1, fol. 31.

—

" Ordered that the surveyor generall or his deputies have power given them, and they are hereby authorised and empowered from time to time and at all times hereafter as occasion shall require to swear those persons that shall carry the chaine."

—

" Ordered and granted by his lordship in councill that what quantity of land shall be thought necessary to be laid out for the chappell, state house and burying place at the city of St. Maries, shall (to save every man's particular right and property there whole and intire,) be supplyed by some other of his lordship's land thereunto contiguous least prejudicial to his lordship."

—

" Ordered that the hon'ble the secretarys for all warrants by them hereafter to be issued upon conditions of plantation now in force, take of all persons sueing for the same penall bonds to his lordship in double the value, and that such warrants be granted to none but such as are responcible and will be certain (as near as may be guessed) to comply with their obligations for the same."

LIBER C. B. No. 1, fol. 31.

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" *At a Councill held at the citty of St. Maries the first day of May Annoq. Dni*, 1683.

" Ordered that proclamation issue for publishing the new conditions of plantation.

" MARYLAND, *ss.*

" *By the Lord Proprietary, a Proclamation.*

" Forasmuch as the taking up of land by rights within this our province of Maryland, hath proved not only *grevious* and burthensome to the inhabitants of this our said province, as well for want of such rights upon their occasions, as for paying for the same extravagant and extortious rates when to be procured; but also very injurious and prejudiciall to ourself by undue and unjust probate made of such rights as we have seen and been informed: We doe, therefore as well for the ease benefitt and certainty of the inhabitants of this our province, and other persons inhabiting trading or residing within the same, as also for the preservation of our own just right and property, hereby fully resolve determine and ordain, that no rights shall hereafter be proved admitted or allowed *off*, for the taking up of land within our said province as formerly by the conditions of plantation of our late dear father Cæcilus &c. of noble memory hath been accustomed; but for the encouragement of any person or persons adventuror or adventurors or others inhabiting residing or trading within this province, We Doe resolve determine and ordain, and hereby declare publish and make known, that any person or persons adventuring trading inhabiting or residing within this our province, and willing to take up any land here, shall for every fifty acres of land he or they shall designe to take up as aforesaid pay or cause to be paid unto us or our heirs the just quantity of one hundred pounds of tobacco in cask together with two shillings sterling yearly rent, unless on the sea board side or the Whorekills, for every fifty acres whereof any person or persons taking up such land shall only pay for the same as aforesaid the sum of fifty pounds of tobacco in cask together with one shilling sterling yearly rent, and so proportionably for any greater or lesser quantity he or they first applying themselves to our secretarys of this our province, or other officer or officers thereunto appointed, and giving good and sufficient caution for the same, as to him or them shall seem meete; Hereby willing and requiring our said secretarys or other officer or officers as aforesaid, upon such caution or security given to issue out warrants under the lesser seale of this our province, for any quantity of land to any person or persons suitor or suitors for the same in manner aforesaid. And to the end that this our will and pleasure may be made known, Wee Do hereby strictly charge and command all and singular the sheriffs of this our province forthwith upon receipt hereof, to make publick procla-

mation hereof in the most publick and convenient place within their severall and respective counties.

Given at our city of St. Maries under the great seal of this our said province the fifteenth day of May in the eighth year of our dominion &c. Annoq. Dom. one thousand six hundred eighty and three."

LIBER R. R. folio 190.

" His lordship having determined to alter his conditions of plantation within this province and caused proclamation to be accordingly drawn, was pleased to communicate the same to his councill for their approbation, which being read and heard was approved of and consented to by the whole board present and is as follows viz."

" *By the Lord Proprietary.*

A PROCLAMATION.

Maryland, ss.

" We having for diverse good causes and considerations us thereunto moveing, fully resolved and determined to alter our conditions of plantation of this our province, and communicated to our councill such our resolutions: We have thought fitt (by and with their advice and consent) by this our proclamation to publish and make knowne the same in manner following (viz.) That all persons adventurers or others of British or Irish descent, inhabiting resideing or trading into this province, desirous to take up any quantity or quantitys of land within this our province, shall pay or secure to be paid unto us or our heirs or such officer or officers as shall be appointed by us and our heyres from time to time to collect and receive the same, the just quantity of one hundred and twenty pounds of tobacco in cask for the just purchase, together with two shillings sterling yearly rent for every fifty acres of Land he or they shall make choice of and take up as aforesaid in any part of this our province except on the sea-board side and Delaware bay and river to the fourtieth degree of northern latitude, which for encouragement of such person or persons as shall desire and undertake to seate the same, Wee will, shall and may be taken up by any person or persons of the descent aforesaid in any quantity not exceeding the number of five hundred acres in one tract to any one person, he or they paying or securing to be paid therefore unto us and our heirs or such officer or officers as aforesaid after the rate of sixty pounds of tobacco in cask for the first purchase together with one shilling sterling yearly rent for every fifty acres he or they shall take up as aforesaid; except also in that part of this our province, on the frontieres thereof

which wee will and intend shall be erected into a county by the name of New Ireland, where any person or persons of the descent aforesaid desirous to take up any land and seate as aforesaid, may take up any quantity or quantityes of land whatsoever, paying therefore or securing to be paid unto us or our heirres or such officer or officers as aforesaid, the quantity of one hundred and twenty pounds of tobacco in cask for the first purchase, together with one shilling sterling yearly rent for every fifty acres he or they shall take up as aforesaid, and soe proportionably for any greater or lesser quantity. All and every the person or persons aforesaid takeing up land as aforesaid in any the aforementioned parts or place of this our province, paying also unto our examiner or deputy surveyor generall of this our province for examining approveing and signing of every certificate of one hundred acres of land or under by him or they taken up as aforesaid, the just quantity of thirty pounds of tobacco, and for every hundred acres above the first, ten pounds of tobacco to three hundred acres, and for every hundred acres after three hundred acres aforesaid the summe of five pounds of tobacco to any quantity of number of acres whatsoever; also for examining and fileing of every plott of land taken up as aforesaid, the just quantity of three pounds of tobacco, for every certificate of resurvey and plott, the same fee as for certificate and plott of original survey and noe more; and for all searches and coppies the same fees as is allowed and taken by our secretaries of this our province in the land office; it being according to a certain settlement of fees by us and our councill lately established and settled upon our examiner or deputy surveyor generall aforesaid. Upon which conditions only and not otherwise, wee will that all lands which for the future shall or may be taken up, shall pass and be granted under the greate seale of this our province, to all and every person or persons takeing up the same as aforesaid their heires and assignes forever, in free and common soccage, by fealty only for all manner of services, and with reservation only of all royall mines as hath been used; and wee do hereby strictly charge and *comand* all and singular the sheriffs of this our province forthwith upon receipt hereof to make publick proclamation hereof in the most publick and convenient place within their several and respective counties.

Given at our city of St. Maries under the great seale of this our province of Maryland the fifth day of April in the nineth yeare of our dominion &c. Annoque Domi. one thousand six hundred eighty and foure.

R. R. R. folio 79.

" C. BALTIMORE.

" Charles, absolute lord and proprietary of the provinces of Maryland and Avalon lord baron of Baltimore, to all to whom these presents shall come Greeting: Whereas I did heretofore make and publish within my said province of Maryland, certain conditions and terms upon which all waste and unreserved lands and lands not resurveyed for my use there should be purchased and surveyed, impowering a committee of my then council of my said province of Maryland, from time to time to give directions according to the said condition for issuing out warrants for the surveying such lands in order for grants thereupon; likewise for the granting of surplusage land found upon resurvey, with several other matters relating to lands; the which committee were commonly called the council for lands; the which conditions were in force within my said province of Maryland in the year 1688, in which said year 1688 also was in force the powers and authorities of my said committee, as by my commission and instructions to them for that purpose remaining within my said province of Maryland relation being thereunto had may more at large appear: Now, know ye, that I reposing especial trust and confidence in the fidelity and circumspection of collonel Henry Darnall of my said province of Maryland, have given granted and authorized, and I do hereby give grant and authorise him the said Henry Darnall, with full power to grant warrant or wartants in the usual manner, for the use of any person or persons whatsoever, under his hand and my lesser seal of my said province of Maryland, directed to any survey or general there for the time being, or his deputy, for the surveying of any quantity of waste and unsurveyed lands, and lands not reserved by me, or as shall be thought fit by the said Henry Darnall to be reserved for my use within my said province of Maryland, as shall be duly purchased according to my conditions of plantation aforenamed; and upon return of certificates of such surveys to him the said Henry Darnall, he to pass grant or grants therefore in my name, in the usual manner, under my great seal of my said province; of Maryland, he in my behalf signing the same, and to cause due registers to be made of such his proceedings in the same manner as they have heretofore been done in that province taking unto himself such fees and rewards as usually have been taken and received for such and the like matters there. And the said Henry Darnall to grant special warrants under his hand and my said lesser seal, for the resurveying any tract or parcel of land within that province; and if any surplusage thereupon shall be found, to sell and dispose thereof to my use in such manner as to him shall seem meet; and to pass grant or grants therefor under

my great seal in manner aforesaid, either a part or upon surrender of the grant of the lands on such resurvey, to include by a new grant the surplus in the whole, regarding what usually has been done in such cases heretofore. And the said Henry Darnall to do all other act and acts, thing and things pursuant to the conditions of plantation aforenamed, and to execute all and every the powers, authorities and instructions by me last given and granted to my said committee for land affairs, commonly called the council for lands in as full and ample manner as the said committee might or ought by virtue of the said powers authorities and instructions to have done, and as if the same had been here particularly mentioned and named; hereby revoking annulling and making void all former commissions authorities powers and instructions touching the premises to any other person or persons by me or my authority formerly given: This commission and the powers hereby granted to continue during my pleasure. Given at London under my greater seal at arms the thirtieth day of December in the year of our Lord and Saviour Jesus Christ one thousand six hundred ninety and five.

LIBER W. R. C. No. 1, fol. 761. Court of Appeals W. Shore.

C. BALTIMORE.

" Instructions power and authority to be observed and pursued by Charles Carroll my agent and receiver general in Maryland, given him by me this twelfth day of September one thousand seven hundred and twelve.

" Upon your arrivall in Maryland you are to publish my directions to you for opening the land office, and that for the future, the caution *usuall* paid for land warrants in tobacco according to my last condicon of plantations is to be paid in money, upon the taking out of such warrants at the rate of one penny per pound; and that having found a great inconveniency in the parcelling out warrants by the people obtaining the same, so as *noe* account could be kept regularly when such warrants were out, but several surveyors have returned certificates for more land than was contained in the warrants upon which they grounded their surveys, being chiefly occasioned by severall little petty assignments made out of the said warrant; wherefore for the future noe warrants must be so parcelled out by assignment, but the whole warrant may be assigned, or after a survey is made by virtue of part of it, the remainder of the said warrant may be assigned. And this you are to express in proper terms to be inserted in all warrants.

" And whereas by the methods heretofore taken by the surveyor, in mencoring a great many *bounders* in the certifi-

cate of the survey by them made great inconveniencys have ensued, and generally speaking, either too small or too large measure given by them as well to my prejudice, as to the prejudice of the people. Wherefore for the future you are either by instructions to my surveyors or by proper words inserted in my warrants, so to order matters, that in all surveys hereafter to be made there be but one bounder or certaine beginning, expressed and sufficiently described, and after that nothing but course and distance to the closing of the survey which is the fairest way betwixt me and the people, and may in all probability be means of preventing several law suits and perjurys about the bounds of land. In as much as (. . .) have now given twelve commissions for surveyors and have no surveyor general, in case of the death of any of the said surveyors you are hereby impowered to appoint and constitute others in their room, till further orders from me: in case of misbehaviour, misfeasance or negligency of the said surveyors, as to the due execution of their office, or wrong by them wilfully done to any person whom they are to serve in their said office, you are hereby impowered to displace or suspend such surveyor or surveyors, and appoint other in his or their place till further orders from me.— You are also hereby ordered and empowered, yearly to pay in tobacco the several allowances heretofore by me made to the several persons and officers herein after menconed viz. to major Nicholas Sewell, twelve thousand pounds of tobacco; to the same major Sewell as an addition thereunto three thousand pounds of tobacco, to Henry Sewell the said major's son for his assistance in my shipping business at Patuxent, three thousand pounds of tobacco; to my shipping officer at Patuxent, six thousand pounds of tobacco; to my officer at Potomack, three thousand pounds of tobacco; to Mr. Anthony Neale, as my gift in token of my respect for him; three thousand pounds of tobacco; to my officer at Annapolis, three thousand pounds of tobacco; at Oxford, three thousand pounds of tobacco, to my officer at Potomack, three thousand pounds of tobacco, to Mr. Robert Brooke, and the rest of his brethren, being in all eight persons, one thousand pounds of tobacco each; in all eight thousand pounds. To Mr. James Haddock one thousand pounds of tobacco; to George Mason one thousand pounds of tobacco; to yourself, the same allowance I have always made you for your advise and trouble about my law concerns, twelve thousand pounds of tobacco; to Cæcill Butler, to be paid on the Eastern Shore, four thousand pounds of tobacco; to James Carroll, for keeping my rent rolls in order, ten thousand pounds of tobacco. You are hereby ordered to grant unto William Richardson of

Ann Arundel county, one hundred acres of land out of the Ridge manor, as full compensacon for one hundred acres heretofore taken by his father in the said manor, and a certificate thereof recorded for himself by virtue of a warrant duly obtained out of the land office, which said one hundred acres was by me granted to a certain Heathcott, which said grant was upon a false surmise or suggestion by him made to me, or at least that cannot be made appear, and take the proper methods for vacating the grant of the said tract of one hundred acres to the said Heathcott.—Whereas, I have heretofore by my letter to coll. Henry Darnall my late agent upon the crown's secretary and chancellor's taking away for their own use one moiety of the fees properly belonging to my land office ordered and directed, that an addition should be made to the price of warrants for taking up land, and empowered the said colonel Henry Darnall and yourself being register of my said office, to take and receive to and for, his and your own proper use and behoof, such addition made to the price of warrants to make good and satisfy you for what have been so taken away of the said fees by the said secretary and chancellor, and least any question of doubt may hereafter arise whether my letter to my said agent was a sufficient power for making the said addition to the price of warrants as aforesaid, and for the taking and receiving to my said agent's use and your own, the said addition, I do Now hereby for me, my heirs, executors and administrators, ratifie confirm and hold, for good and valid whatsoever my said agent hath done in relation to the said addition, and his and your receiving the same, do and for his and your own proper use and behoof. And do further hereby acquit, exonerate, release and forever discharge, as well the heirs executors and administrators of the said coll. Henry Darnall, as yourself, your heirs, executors and administrators, of and from all claims and demands whatsoever in reference to the said addition, hereby further impowering and authorising you, your executors and administrators, to receive and take to and for your and their own proper use, such part of the said addition as may still be outstanding in debts, whether by bond, account, or otherwise howsoever, altho' payable to me, or any other in trust for me, hereby further authorising and impowering you to continue the said additional price upon warrants so long as the said secretary and chancellor continue their claim and demand of the said moiety of the said fee and take and receive the said addition to and for your own use during your continuance in the office of register of our land office.

" And whereas my late son-in-law Edward Somersett esquire, was trustee for me and in my said province of Maryland, and as such several bonds, bills of exchange, accounts

and other duties properly belonging to me, were made, transacted, settled and passed in his name though to and for my proper use, account and benefitt; and for as much as you have upon the death of the said Edward (having no other estate in the said province, but my estate in trust) taken out letters of administration of his estate, without sufficient authority from me or the executors or administrators of the said Edward; but as I am very well satisfied, to the only end and purpose that my interest should not suffer in that behalf, by waiting for authentic powers and authorities, in that point, which at so great a distance would take up much time and by that means prove detrimental to my affairs. I do therefore for me my heirs, executors and administrators, ratify confirm and hold for good and valid all whatsoever you have done in the premises, *Hereby* obliging myself, my heirs executors and administrators, to *have* harmless and keep indemnified as well yourselfe as your heirs, executors and administrators, of and from all and all manner of suits troubles accounts claimes or demands whatsoever *off* by or from the heirs, executors or administrators, of the said Edward Somersett, or any other person or persons whatsoever on account of what you have done or caused to be done in the premises. Whereas upon the death of my late agent coll. Henry Darnall there was no person in the said province duly authorised from me to undertake the receipt and management of such branches of revenue as my said agent was by me intrusted, and to supply that defect, you, (least my affairs and interest should suffer in that respect) taking upon you to give the necessary directions in the receiving, managing and remitting to me the effects arising by such branches, I do therefore ratifie, confirm and hold for good and valid, all whatsoever you have done or caused to be done in the premises, in as full, large and ample manner with all incidents thereunto as if my commission to you bearing even date with these presents had been actually passed at the time of my said agents death—In case of your death before I make any alterations in the instructions to you, or commissionate any other person in your room; it is my will and I do hereby order and impower major Nicholas Sewell, Mr. Henry Darnall, and Mr. Edward Digges of my said province, the survivor or survivors of them to take upon them the execution of the powers and authorities of my commission bearing even date with these presents, and by these instructions granted you until further order and directions shall be by me given in that behalf; who are to continue as register of my land office at Annapolis, the person at such time by you employed under you in the said office till further order from me. *Whereas* in all grants of land heretofore by my father

and myself made, the penalty inserted for non-payment of any alienation fines, was only the making of the alienation void which I found by experience to be of little use to me; and that several persons in my said province have made several alienations of land without paying me my alienation fines before such alienacon; to prevent which inconveniency for the future, you are hereby ordered instead of the clause heretofore inserted in the grant for the making the alienation void upon non-payment of the fine, before such alienation, to insert a proviso for making my grant void in case the alienation fine reserved be not paid before such alienation. The severall persons herein before menconed to whome I have made any allowance in tobacco, are in the first place, if any of them hold lands of me to discount the rents and arrears of such lands out of the allowance which I have ordered you to make them. In case you take out any warrants yourself and grants of any lands thereupon (it being not proper you should sign and seal such warrants and grants yourselfe) major Nicholas Sewell, Mr. Henry Darnall or Mr. Edward Digges are hereby impowered to sign and seal such warrants and grants. You are to grant Cecill Butler a warrant or grant for five hundred acres of land, as a full compensation for his pretensions on account of his late father-in-law Robert Carvill on the land formerly belonging to one Roderick, which was by me granted to Peter Sawyer and James Heath, as also to grant him a lease for the plantation of St. Johns near the city of St. Marys pursuant to my directions heretofore given to collonel Darnall.

You are to grant to Henry Wharton one hundred forty six acres called The Neighbourhood adjoining to Notley Hall in case the same belong to me.

You are to grant to Henry Sewell a piece of escheat land of two or three hundred acres.

You are to grant Gerard Stye a piece or pieces of escheat land of five hundred acres in all, in full compensation of his pretensions to five hundred acres sold to his father by Charles Calvert, and supposed to be within my manor of Anne Arundel for which I have also given captain Richard Smith a compensation pretending right thereto from the said Charles Calvert's father.

You are to grant Anne Duckworth one hundred acres of land, being in consideration of the like quantity, Hopewell her former husband pretended a right to in Mattastiny manor; the said one hundred acres to be out of the Millmannor in St. Marys county, but with the least prejudice to the remainder.

You are hereby required to authorise Mr. Henry Darnall to let and lease my manors of the western shore at the usual

fine of forty shillings, and yearly rent of ten shillings per hundred acres, as also to receive the rents and fines aforesaid and the arrears thereof, who is to account with you yearly for the same, such lease to be for one and twenty, or three lives and no more: as for my manors on the eastern shore you are to lease them or any part thereof at the fine and rents. I do hereby further order and impower you to authorise and appoint the said Mr. Henry Darnall, to be my examiner general within my said province. Whereas I have received from captain Richard Smith, two letters in one whereof he claimes the benefitt of a promise of mine and of a letter by me writ to his wife Barbara, dec'd, about one thousand one hundred acres of escheat land by me promised to be granted her; you are to inspect into my letter, and to comply with the contents thereof in reference to the said one thousand one hundred acres of escheat land; in his other letter he complains of a suit commenced against him by Mr. Bennett and Heath for rent for which I ordered he should be acquitted of during my life; inspect also into that matter, and give him what assistance you can towards receiving the benefitt of any order you shall find by me made in his favor. I do hereby also confirm a a grant passed by collonell Henry Darnall to yourself of two hundred acres of land near the city of St. Mary's which I formerly writt to you should be granted to you when my land office would be opened.

(L. S.)

CHAPTER VII.

OF RESURVEYS.

IT is now time to examine the important and copious subject of resurveys, which are not perceived to have been in use until the year 1658, and the origin of which, so far as respects any special authority for their introduction seems to have been doubtful, since in the year (*a*) 1692 a question

(*a*) This was in the reign of king William, when lord Baltimore was deprived of the government of the province, retaining only his right in the soil, and managing his interest in that by a chief agent and other *private* officers. The king's government was embarrassed by many questions respecting their right to grant warrants of survey, as it involved that of selling what was deemed lord Baltimore's absolute property. They were less scrupulous about warrants of resurvey as that concerned only such lands as were already granted: but willing to have some grounds or precedents for their proceeding they started the above mentioned enquiry.

was propounded by governor Copley to the council, by what authority the board had usually granted warrants for resurvey of lands: to which some of the members answered that there was a law, *they believed*, relating to that matter; but though upon this information an order was passed "that the said law be produced and inspected," I have examined in vain the subsequent proceedings of the council for the production of such a law, and I believe that the resurveying of lands already held by grant, or under certificate, had its origin in Maryland merely in the reason and utility of the thing, supported perhaps by precedents from the older colony of Virginia. It was a proceeding which naturally arose from the incorrectness of original surveys and the desire of individuals to ascertain with precision the quantities and bounds of their land; besides which it presented a variety of conveniences and advantages too obvious to be overlooked by a people engaged with the utmost eagerness, in extending and improving their landed possessions. The first peculiarity that occurs relative to warrants of resurvey is that they were not generally granted as matter of right, but were during the entire period of the proprietary government preceded by petitions, stating the reason or object of the application. The most common grounds assigned were the uncertainty of existing bounds, and the desire of the parties to connect several adjoining tracts in one survey; for, from the commencement to the present time, it has been essential that the lands included in a resurvey should be contiguous to each other. The privilege of taking in adjoining vacancy, over and above the quantities originally granted, which is now a main object of resurveys, did not for many years attach to this kind of warrant, which was in fact considered a matter of special favour, and in some cases refused when applied for. The general ground of refusal was the effect alledged or supposed of the intended resurvey upon the interest of other persons, and particularly of minors: but the interest of the (*b*) proprietary was also attended to on these occasions, and although the warrants were not often refused, the benefit aimed at of adding surplus or vacant land to the original tracts, was in many instances kept in reserve, to be accorded or not as the proprietary or his council might think proper when the quantity and value of such land was known by the return of the certificates. Nevertheless the the warrant of resurey was permitted to be used to many advantageous purposes. Among these was the excluding of

(*b*) The government did not encourage resurveys in the neighbourhood of the manors and reserves, round the former of which they frequently laid, as has been seen, additional reserves or interdictions of some miles in extent, for fear of having their real bounds encroached upon.

bad, and taking in of better lands, sometimes, it is believed, unfairly, so as essentially to change the original locations; The exclusion of lands comprised in elder surveys; the obtaining allowance for actual deficiency; for water comprehended in the first surveys, or for ground subsequently washed away, &c. In regard to these allowances, it seems to have been an early principle that the proprietary guaranteed the quantity of land expressed in his grants, while, on the other hand, he laid claim to all excess, by the denomination of *surplus land*, concerning which many regulations in course of time took place. This surplusage, which was more common than deficiency, gave rise to innumerable warrants of resurvey, sometimes demanded by the patentees, when they found that the excess of their grants could not be concealed, and on other occasions, issued by direction of the government where information of surplusage was obtained. For a long course of years however the successive proprietaries were very tender on this article:—They called indeed upon their tenants by repeated proclamations to ascertain and pay for the surplus lands in their possession, limiting particular periods for that purpose, and threatening to dispossess those who did not comply, but still without putting those threats in execution, until, in the year 1735, it was determined to grant warrants to the first *discoverers*, enabling them to make resurveys *on the lands of other persons*, and to become purchasers of the surplusage found therein. This kind of warrant, which is not generally known to have existed, occasioned, as appears by some memorandums worthy of credit in my possession, "great confusion in the province" and was out of use before the approach of our revolution. It is noticed here as forming from its object a distinct species of resurvey warrant. Many others although differing little in form, were also distinguished in their design from the warrant of resurvey now in practice, which is always taken by or for the use of the person owning or having title to the land to be resurveyed, and for the declared purpose of taking in adjoining vacancy, and, if for several tracts, of connecting them in one survey; comprehending also, by necessary consequence, the ascertainment of locations, quantities and bounds, and the exclusion of lands belonging to elder surveys, with the further object of obtaining allowance for deficency, which the state of Maryland still continues to deem itself accountable for, while it exacts nothing for surplusage. Having given this general (c) account of the warrant of resurvey, which, from the various purposes to which it was

(c) The 3d, 4th, 5th, 6th, 9th, 10th, 13th, 17th and 18th articles of the preceeding instructions to the land council relate in whole or in part to the subject of resurveys: the reader will find it useful to recur to them.

turned, gave a greater degree of activity to the land office than it had possessed even while the taking up of land by original warrants constituted the most general pursuit of the inhabitants of Maryland. I shall proceed as in other matters to shew by examples, intermixed with necessary remarks, all the principles, views, and distinctions, which are perceived to have regulated the practice in this article ; premising however that *escheat* and *proclamation* warrants which, as well as the *surplus* warrant just alluded to, are also warrants of resurvey, will require to be separately examined, and will not be noticed in this place.

The following is the first warrant of resurvey found on record.

" October 20th 1658.

" Whereas there have been several parcels of land by war-
" rant surveyed in the county of Ann Arundell in a place
" there called the Town neck, (viz. to William Pell, George
" Saphir, Robert Rockhould, William Penny, Christopher
" Oately, Oliver Sprye, John Lordking and Richard Bennett,
" senr. which several parcells in all amounts to two hundred
" and fifty acres, and by conveyance is since become the sole
" right of the said Richard Bennett, and now by the like con-
" veyance the right of coll. Nathaniel Utie ; These are there-
" fore to authorize you to lay out all the said several parcels
" into one, and make return of your certificate and this war-
" rant by the last day of this month, and for so doing this
" shall be your warrant.

PHILIP CALVERT."

To Mr. Rob't Clark surveyr. Generall.

LIBER No. 7, fol. 508,

The certificate, returned the 18th of November following, does not recite or in any manner refer to the warrant or the original surveys. It bears in short no distinguishing mark whatever of being a certificate of resurvey ; but the patent recites that William Pell and the others mentioned in the warrant, had in the years 1649 and 1650 transported themselves into the province, and for their mutual security, had taken up and seated themselves near together on small parcels of land in a place called the Town Neck : that these parcels having been purchased for valuable considerations by Richard Bennett, and since aliened by him to Nathaniel Utie, and " *now again*" surveyed for the said Utie " *as into one entire freehold*," the said land called the Town Neck, is therefore granted, &c.

The structure of the preceding warrant furnishes some evidence that resurveys do not derive their origin from any special ordinance or instruction from the proprietary, in which

case, something like a form would probably have appeared, instead of the very simple recital and direction contained in this and many succeeding warrants. The object indeed of this resurvey was such as the government could not be in any manner interested to prevent, being merely the connecting of several small surveys in one grant: It was rather a convenience, in regard to the collection of rents, to have to do with one substantial tenant, instead of a number of poor ones; and while the warrants of resurvey embraced no privileges respecting vacant land, they appear to have been issued readily upon application. As soon as the right to take in vacant land became attached to this warrant, it was obtained with more apparent difficulty, although the privilege went, at first, no further than the completing the quantity of the original grants, if they should be found deficient, by vacancy thereto adjoining, if to be found, and if not by vacant land elsewhere. The privilege of adding all contiguous vacancy in resurveys is as before observed of comparatively late date, and appears to have arisen out of considerations, which had for their object the proprietary's (*d*) advantage and not that of the patentees. The right to correct and (*e*) amend errors in the orignal surveys, especially to the prejudice of younger surveys, is also an ingredient not at all times found in the form of these warrants.

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The resurvey which has been here exhibited was made on lands never separately patented, and was founded on no alledged errors in the former surveys or any apparent motive but that of connecting them in a single grant. The following warrant relates to a patented tract, and is grounded on an alledged interference of lines.

After a petition from Thomas Smoote, and an order for its being granted the record proceeds—

" Thomas Smoote to us maketh complaint that the lines of " a parcel of land belonging to Robert and Thomas Hatton " containing five hundred acres doth into a parcel of land " run formerly taken up by Thomas Gerard now in the pos- " session of the said Smoote, containing also by estimacon " five hundred acres, desiring warrant to resurvey his said " land by the former lines first run out for the said Gerard.

" Wherefore lay out for the said Thomas Smoote the said " parcel of land according to its ancient bounds, and make

(*d*) The disposal of land which might otherwise be left in narrow slipes, or in other inconvenient forms and situations, so as to become unsaleable.

(*e*) It is not meant to say that this privilege or that of adding contiguous vacancy is of very modern date; but they did not belong originally to warrants of resurvey.

" return of the said survey into the office at St. Mary's, and " for so doing this shall be your warrant. Given under my " hand this fourteenth day of June, one thousand six hun- " dred sixty five.

" CHARLES CALVERT.

" *To Jerome White, Esq. surveyor*
" *general or his deputy.*"

LIBER, No. 7, fol. 608.

Warrant of Resurvey founded on an alledged deficiency in the original, and containing a direction to the surveyor to make good the deficiency on any land not already surveyed or reserved.

" HONOURED SIR,

" Whereas I am informed by Mr. John Lewger, how the lines expressed in the patent of Thomas Simpson doth not contain by a great deal the quantity of acres there menconed, therefore I would desire of your honour to grant a warrant to resurvey the said land and to allow in the said survey the quantity of land due to the said Thomas Simpson, being not yett surveyd by no man, and you will oblidge your very oblidged servant.

JEROME WHITE.

The eighteenth of February one thousand six hundred six- ty four.

To the hon'ble the lieu't generall."

" JENIFER,

" I would have you give the bearer hereof a warrant to re- survey his land and direct it to Mr. White.

CHARLES CALVERT."

" Whereas Thomas Simpson hath a parcell of land called Simpson, containing (as by former survey three hundred and fifty acres which as alledged) holds forth not near the said quantity. These are therefore to require you to resurvey the said land, and what shall fall short in the whole quantity of three hundred and fifty acres to lay it out elsewhere, where the said Thomas Simpson shall like of in any part of this pro- vince not formerly taken nor reserved for his lordship's use, and return your certificate of survey with the name of the place, of what mannor to be held, and in what county it lieth in, into the secretary's office by the ninth day of August next, and for so doing this shall be your warrant. Given under my hand this sixth day of February, one thousand six hundred sixty four.

To Jerome White, Esq. surveyor generall or his deputy."

LIBER, No. 7, fol. 508.

Resurvey by order of the government.

"Whereas I am informed there is an erroneous survey made of a tract of land now in the possession of captain James Neale, that did formerly belong to Benjamin Gill deceased, containing one thousand acres the survey made in anno one thousand six hundred forty nine, which is conceived to be more, and so to the prejudice of his Lordship in point of rent; these are therefore in the name of the Lord Proprietary to will and require you to resurvey the said land according to the ancient meets and bounds, and to return the true contents thereof into the secretary's office within six months after the date hereof; and for so much as you shall find that tract to contain more than one thousand acres, accept of rights from the said Neale out of those rights which he hath already upon record or shall further enter, and for so doing this shall be your warrant. Given under my hand this sixth day of October one thousand six hundred sixty four.

True copy to be recorded.

DANIEL JENIFER.

To the surveyor general or his deputy."

LIBER No. 7. fol. 468.

This tract was found on resurvey to contain an excess or surplus of 220 acres, for which Neale entered and applied five rights, as by the warrant directed, and obtained a new grant for the whole 1220 acres.—This is called on record a *patent upon resurvey*, and not patent of *confirmation* which term had not then got into use.

On information given in council the 4th of October 1684, that colonel Thomas Taillor held within a certain tract much more land than it was granted for, the following order was passed.

"MARYLAND, *ss.*

"Whereas information was this day given, and this board have understood that the honourable colonel Thomas Taillor, holds within his bounds a far greater quantity of land than is granted him per his patent, whereby his lordship hath been deceived in his rents;

"*Ordered*, therefore that due notice be given to the said colonel Thomas Taillor to *sue forth* warrant of resurvey to ascertaine the same; otherwise it is concluded (in case he shall refuse) that speciall warrant issue by order of this board on behalf of his lordship for the resurvey thereof."

LIBER C. B. No. 1, fol. 117.

A second resurvey ordered upon complaint that the first was erroneous.

MARYLAND, *ss.*

BY HIS EXCELLENCY THE GENERALL.

"Whereas I did by especiall warrant under my hand and lesser seal of this province, bearing date the 21st day of April last past, command and require you or your deputy to resurvey and lay out for Henry Cox of the county of Calvert, planter, three hundred acres of land called Lyons Creek, lying in the said county, according to the ancient bounds thereof, and that you should summon some of the ancient inhabitants of the said county to be present when the same should be resurveyed, and by their evidence thoroughly inform yourself of the ancient bounds of the said land and return a certificate of such resurvey into the secretary's office; and in obedience to the said speciall warrant, Charles Boteler, gent. deputy surveyor for the said county of Calvert, hath returned into the said office a certificate of the said lands bounds, dated the 27th of June last past and by him surveyed in the presence of Richard Hall, George Lingam and Paull Busy, good and lawfull men of the said county, and underneath the said certificate the said Richard Hall, George Lingam and Paul Busey have certified under their hands that the said Charles Boteler's certificate of resurvey is according to the ancient bounds of the said land, but for that complaint hath been made unto me by James Thompson who hath since purchased the said land, that the same is not resurveyed according to the ancient bounds thereof as he is able to make appear by the oaths of severall persons inhabitants of the said county, that were present at the first survey of the same, and being willing to have the truth of the premisses discovered and a true certificate of the same returned, have empowered and commanded Tobias Norton, gent. one of the commissioners of the said county of Calvert, to be with you at such time as you shall give him notice, upon the said land, and to administer an oath to such persons as shall be by the said James Thompson produced to give evidence which were the ancient bounds of the same:—

Resurvey and lay out therefore for the said Henry Cox, the said parcell of land according to the ancient bounds thereof, and according to such evidence and directions as shall be given unto you by the said witnesses, upon oath sworn before the said Tobias Norton, as aforesaid; PROVIDED the lines of the said land do not run into other men's lines surveyed before the first survey of the said land, nor into any land before that time reserved for his lordship's use; and return your certificate of resurvey, the evidence of the witnesses sworn as aforesaid, with the name of the place, in what coun-

ty it lyeth, and of what mannor to be holden, into the secretary's office with all convenient speed; and for so doing this shall be your warrant. Given under my hand and lesser seal of this province, the second day of August, in the 40th year of the dominion of Cæcilius, &c. Annoque Dom. 1671.

Signed per order and appointment of his excellency the general.

(L.S.) ROBERT RIDGELY, Clerk.

To Robert Brooke, Esq. sur. gen'l, or his deputy."

LIBER, No. 13, fol. 131.

In the next case which it appears of use to insert, a warrant of resurvey is demanded by a person upon the land of another, for the purpose of establishing, against the owner's will, the main or only boundary thereof in order to defeat a design, attributed to the said owner of *letting fall* his patent, and making a new survey, to the prejudice of the petitioner. This case also exhibits a practice in use in the early and middle periods of the proprietary government, that of making resurveys under the direction of a jury empannelled and sworn by the sheriff of the county. The nature of this proceeding is so fully displayed in the following extracts, as to require no further remark.

BY JAMES WEATHERLY, A PETITION, VIZ.

To the Hon'ble the Lord Proprietary and to his hon'ble Councill.

" The humble petition of James Weatherley of Somersett county sheweth, that Richard Whittmarsh of Accomack in the colony of Virginia, had granted unto him by letters patents under the greate seale of this province, bearing date the second day of October Anno Domini 1666: a parcell of land for 300 acres called Whittmarsh Delight in Nantecoke river in Somersett county, all whose right and title, of in and thereunto, the said Whittmarsh sold, assigned and sett over unto major Waters of Accomack aforesaid, who also sold the same to John Lyon of the aforesaid county of Somersett, the present possessor thereof; who being dubious of his title thereunto, not having the same legally made over according to the law of this province in such cases made and provided; it is intended to lett fall the patent for the same granted to the said Whittmarsh as aforesaid, and to take up the same quantity of land without the true bounds of the said tract, by running into a tract since surveyed for your petitioner and adjoining to Whittmarsh Delight aforesaid, under pretence that the same

is the land surveyed for the said Whittmarsh, there being but one bound tree to be found upon the said tract which will be of great damage to your petitioner, and breed greate disputes and contentions among posterity; to prevent which, and to ascertain the bounds of both your petitioner's land and the land surveyed for the said Whittmarsh, your petitioner humbly prayed your lordship's special warrant to resurvey the said tract called Whittmarsh Delight, according to the true ancient intended meets and bounds thereof, to be laid out accordingly by and with the advice and directions of twelve good and lawfull men of the neighborhood therein knowne, to be by the sheriff of the said county of Somersett thereunto impannelled and sworne, for the surveyor's better information and instructions, and as in duty bound he shall pray &c.

"*Ordered*, that warrant of resurvey accordingly issue for the said tract called Whittmarsh Delight, to be laid out according to the true ancient intended meets and bounds thereof, to be ascertained by a jury of the neighbourhood by the sheriff of the said county of Somersett, thereunto lawfully impannelled and sworne for the surveyor's directions, giving also power and command to the said sheriff to sware witnesses."

Vid. Warrt. Res.—Liber W. C. No. fo.

Liber C. B. folio 199.

"MARYLAND, *ss.*

"Whereas John Lyon of the county of Somersett (being possessed of a certain tract of land in the said county fomerly laid out for Richard Whittmarsh, called Whittmarshes Delight, lying on the east side of Chesapeake bay in a river called Nantecoke river, on the east side of the said river in a creek called Rowartiquot on the east side of the said creeke, beginning for breadth at a marked white oake, and running south one hundred and fifty perches to a marked red oake, bounding on the south with a line drawne west three hundred and twenty perches to a marked white oake, bounding on the west with a line drawne north one hundred and fifty perches by the river, bounding north with the said creeke, and bounding east with a branch of the said creeke, containing and there laid out for three hundred acres of land, more or less, not satisfied with his title thereunto intendeth to lett fall the pattent granted to the said Whittmarsh, for the same, and to take up the like quantity of three hundred acres of land by intrenching upon and running within the lynes of another tract since surveyed for James Weatherley of the same county and adjoining thereunto, under pretence of a more antient survey, and because there is but

one bound tree of the said tract called Whittmarsh Delight now to be found whereby to ascertain the true bounds thereof; as by the complaint of the said Weatherley is sett forth: for which reason he hath prayed, (to prevent any further disputes) his lordship's speciall warrant to resurvey the said tract called Whittmarsh Delight according to the true intented ancient metes and bounds thereof to be ascertained by a jury of the Neighbourhood therein well knowne, which the said Weatherley alledgeth are now living and it was granted unto him.

" *Resurvey* therefore, and lay out the said tract called Whittmarsh Delight, according to the true intented antient meets and bounds thereof accordingly as you shall be directed by twelve good and lawful men of the Neighbourhood therein well knowne, to be by the sheriff of the said county thereunto impannelled and sworne, which accordingly the said sheriff is hereby authorised and empowered to doe, as also to take evidence upon oath of such persons as shall then and there be produced, and appeare and return your certificate of resurvey thereof into the land office at the city of St. Maries with all convenient speed; and for soe doing this shall be your warrant. Given under the lesser seale of this province, the fourth day of March in the seventh year of the dominion of the Rt. Hon'ble Charles, &c. Annoque Domini 1681.

" Signed per order and appointment of the
Rt. Hon'ble the Lord Proprietary,

" JOHN LLEWELLIN, Reg'r.

" *To Vincent Lowe, Esq. Surveyor Gen'll or his Deputy* ——."

LIBER W. C, No. 4, folio 137.

John Lyon cert. resurv. 300 ac. called "Whittmarsh," at suit of Jas. Weatherly.

Maryland, ss.—To the right hon'ble Charles lord Baltimore, lord and prop'ry of this province, &c. March the 20th, 1681.

By vertue of a speciall warrant bearing date the fourth day of March, in the 7th year of the dominion of the right honourable Charles, &c. Annoque Domini 1681, granted out of the office for lands unto James Weatherly, of Somerset county, for the resurveying and laying out of a tract of land now in the possession of John Lyon, formerly surveyed for Richard Whittmarsh, called Whittmarsh Delight (by the direction of a jury, &c.) These are therefore humbly to certifie, that I, Francis Jenkins, deputy surveyor under the hon'ble collonel Vincent Lowe, Esq. surveyor general, have (by

the direction of a jury, &c.) resurveyed and laid out the aforesaid parcell of land called Whittmarsh Delight, scituate lying and being on the east side of Cheasapeake bay and Nantecoke River, on the south side of a creek of the said river called Roiwasticot, bounded as follows: beginning at a marked white oak standing on a point of high land by the aforesaid creek near the Emperor's Landing (being formerly marked for the first bounder of the said land as appears by John Anderson of the county aforesaid, one of the aforesaid jurors, who affirmed he was at the first survey thereof,) thence with a line drawn south one hundred and fifty perches to a marked small gum, standing in the side of a swamp, thence with a line drawn east for length three hundred and twenty perches to a marked pine standing by a swamp side near a marked road, thence with a line drawn north one hundred and fifty perches to a marked small oak on the west side of the aforesaid road, and from thence with a right line drawn to the first bounder; containing three hundred acres more or less.

Per me, FRANCIS JENKINS, D'ty Sur'r.

Approved on by me Vincent Lowe, sur. gen'l."

Annexed to the foregoing certificate was also returned into the office the verdict of the Jury upon the resurvey, as follows, viz.

"*March the* 20*th day*, 1681-2.

"Whereas his lordshipls speciall warrant was granted unto Mr. James Weatherly, directed to Vincent Lowe, Esq. surveyor general, or his deputy to resurvey and lay out a tract of land called Whittmarsh Delight, lying on the east side of Cheasapeake Bay, in a river called Nantecoke river on the east side of the said river in a creek called Roiwasticot on the east side of the said creek; beginning for breadth at a marked white oak and running south one hundred and fifty perches to a marked red oak, bounding on the south with a line drawn west three hundred and twenty perches to a marked white oak, bounding on the west with a line drawn north one hundred and fifty perches by the river, bounding north with the said creek, and bounding east with a branch of the said creek: containing and laid out for three hundred acres more or less, formerly surveyed for Richard Whittmarsh.

And that the sheriff of this county of Somersett should empannell a jury of twelve good and lawfull men of the neighbourhood to direct the resurvey of the said land, according to the true intended ancient meetes and bounds thereof: the said jury being summoned, impannelled and sworn, and viewing the bounds of the said land, do find that the said land begins at a marked white oak first bounder, and from thence running

south one hundred and fifty perches for breadth, and from thence (contrary to the above said certificate) running east three hundred and twenty perches for length, and from thence running north one hundred and fifty perches for breadth, and from thence with a right line to the first bounder; as per the certificate of resurvey more plainly will appear which is confirmed by the jurors' subscriptions and seals hereunto annexed.

(Signed, &c. by all the jury.)

LIBER No. 1, fol. 421.

Resurvey where Minors were concerned.

There is in the land proceedings of the proprietary government an appearance of great attention to the interests of orphans and minors:—In general it was the practice, and there are some express orders upon that subject, to let every thing in which those persons were concerned stand in its actual state until they should be of age—There are, nevertheless, instances of resurveys for the benefit of minors:—In these cases the application was made by their parents or guardians, but the warrant (reciting such application) issued in the name of the minor—In a certain case the warrant issued on the 27th of March 1718, was renewed the 24th of August 1719, and, although no further renewals are found, the certificate was returned, and patent issued, as late as the year 1732, when the minor had probably come to age; so that the ordinary rule for the execution of warrants seems to have been dispensed with—

The most frequent proceeding in respect to orphans was the forbidding resurveys by which their interests might be affected:—Another was the accepting of rents due on their lands notwithstanding any lapse of time in tendering payment, thereby exempting them from the general consequence of delay; and there are some instances of grants to orphans upon titles which might be considered doubtful. A few cases are here selected to exemplify the proceedings in this particular.

"Mary Tilghman widow, and Richard Tilghman, her son, aged eleven years by their petition set forth that the said Richard is possessed, by grants (to his ancestors) of several tracts of land, which, by reason of his non-age, he is not in a capacity to have surveyed in order to discover if there be any surplusage within his bounds, and that some persons have endeavoured to take up land within the same, without

any special grant or order from his lordship—they therefore pray that in consideration of the said Richard's infancy, his lordship would be pleased to stop the issuing of any warrants to affect the said lands—Whereupon,

"' Ordered that no advantage be taken against the petitioners by reason of any survey made within the bounds, of their said lands, but that for the future a stop be put to the granting of any special warrants for the *resurvey* thereof until the orphan shall come of age and desire the same, or any other person for and on his behalf shall do it."

LIBER C. B. No. 1, fol. 19.

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"Nicholas Butterham, guardian to William Henry Bussey, an infant, son and heir of George Bussey, deceased by his petition sets forth that the said Bussey held, by patent, a tract of land, in Calvert county, laid out for seventy-five acres, called The Horse Range, to which his said son is become rightfully entitled;—That George Carter had, by a subsequent survey, taken away the said orphan's plantation and houses; that the petitioner had thereupon obtained a warrant to resurvey the said land, with liberty to include the surplus;—that upon the said resurvey it was found to contain a surplusage of 135 acres and 2 roods, but that the said Carter keeping possession of his 113 acres, although he knew that the same was within the orphan's bounds, and could not therefore be affected by a common warrant, the petitioner was obliged to bring an action of ejectment, and that the provincial court having ordered a resurvey *by a jury and evidence*, the land was on such evidence found to contain within its ancient bounds 231 acres, so that there were 156 acres of surplus land; He therefore prayed that his lordship would grant to the orphan the said surplus, and order a patent of confirmation for the whole, agreeably to the last mentioned resurvey:—and as the petitioner had been cast in the action of ejectment through a mistake of the jury, by them acknowledged, his lordship would grant a writ of error to have the whole merits of the case brought before his lordship in his upper house of assembly, and supercedeas upon the judgement entered in the records of the provincial court."

"Order issued for a supercedeas accordingly, and a transcript of the proceedings to be transmitted to his lordship at the next general assembly in order for a hearing upon the whole merits of the cause as prayed."

LIBER C. B. No. 1, fol. 33.

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"Henrietta Maria Lloyd widow of Coll. Philemon Lloyd deceased, in behalf of her daughter Henrietta Maria Lloyd, by

her petition sets forth, that the said Philemon Lloyd, being possessed in his life time of a tract of land called The Addition, bequeathed the same to his said daughter, and had previously improved the land by several buildings; that he had also made a lease of the said land, with stock thereon, for fifteen years, to John Nunan, who finding that the houses had, by mistake, been placed *without* the lines of the said land, upon his lordship's forest, had by a common warrant taken the houses and improved lands, and refused to pay rent, or to account for the stock, under pretence that it was put to graze on his lordship's said forest—She therefore prayed that no patent might issue upon any certificate of the said Nunan's bearing date within a twelvemonth past, but that she might, on a full hearing, be enabled by a special warrant, to take up the said houses and improved land for the benefit of the said orphan.

" Ordered that no certificate as above described be *admitted;* or, if already returned, that no patent be issued thereon until the petitioner have time to move the board for redress, and they signify their further pleasure therein."

LIBER C. B. No. 1, folio 177.

After very lengthy proceedings in this case in which it appeared that Nunan had *seated* the land in question before the lease, though *on account and by encouragement*, of Coll. Lloyd, the Council determined that the matter was " not remediable" by them—the party aggrieved was therefore *left to the common law*, and patent issued to Nunan on his certificate.

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" *Petition of Honora Furness, widow of William Furness of Somerset County deceased, in behalf of the heir of the said William.*

" The deceased had died possessed of a tract of land, but through ignorance of the conditions of plantation, had thought his title sufficient by laying out and duly returning certificate of the said land, and had neglected to obtain a patent. The Petitioner prays a warrant of resurvey with liberty to add about two hundred acres of marsh land, " to prevent evil minded persons from encroaching thereon to the prejudice of the said heir."—Ordered accordingly."

LIBER C. B. No. 1, folio 185.

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" The Hon'ble Clement Hill Esq. one of the executors of " Richard Gardiner late of St. Maryes county dec'd, moved " the board, that whereas upon a petition of the said Gardi- " ner the 8th of March 1686, to this board for a warrant " resurvey for Barbartan mannour, the same was granted

" but never executed in the life time of the said Gardiner " and therefore prayed his executors may prosecute the said " warrant resurvey already granted, with further renewment " thereof; the which was granted, and ordered accordingly " for the use and benefit of the orphans of the said Rich- " ard Gardiner."

LIBER C. B. No. 1, folio 299.

Resurvey for the purpose of leaving out poor land.

" John Bradford of Prince George's county, in behalf of Thomas Butler an orphan, under his guardianship, sets forth, that the said Butler is siezed in fee of two tracts of land, the one called *Harmitage* originally granted to William Joseph, Esq. and the other called Joseph's Parke granted to William Joseph junr. containing together eight thousand one hundred and six acres; that he the petitioner upon inspection into the bounds of those tracts finds that a considerable part of both of them is " very mean, barren, and unprofitable;" wherefore he prays a special warrant to resurvey them, " with power to " exclude and leave out such part of them as is useless, " mean and barren, and to add a like quantity, if to be found, " of good tillable land thereto adjacent," and that if a sufficient quantity should not there be found to supply the place of such " Barrens" a warrant may be issued in the name of the said Butler to be executed and laid in such place as the petitioner shall think fit.

" Warrant of resurvey granted (dated August 19th, 1714) with direction to the surveyor to frame such courses as the said Bradford shall direct, in order to exclude bad, and include good and beneficial land."

LIBER A. A. folio 333.

Resurvey for the purpose of leaving out Water.

" Robert Gouldsborough and Elizabeth his wife, set forth that in right of the said Elizabeth, they are siezed in fee of a tract of land called Town Neck, lying in Ann Arundel county, granted and confirmed in the year 1658 to Nathaniel Utye for 250 acres: that upon scrutiny they find a considerable part thereof is run into and taken away by several creeks and coves of water: They therefore pray a Warrant to resurvey the same " after such manner as shall leave out the said water," and if vacant land shall be found contiguous, to include the same, &c. Warrant issued accordingly."

This is the same land which has furnished the example of the first resurvey found on record.

OF THE TITLE NECESSARY TO THE VALIDITY OF WARRANTS OF RESURVEY.

It was always peculiar to this kind of warrant that it was to operate on the party's own land, that is to say, on land, in some sort, owned, or claimed, by the person in whose name the warrant was issued. Without a title set forth he could not obtain the warrant, and without a good title it would not avail him when obtained and executed, if by means of a caveat, or in any other way, the defect became known. It is hardly necessary to state as an exception to this, that persons sometimes obtained warrants or orders for resurveying the proprietary's manors, in order to discover how their own lands stood in relation thereto, or that the land of one man was resurveyed at the instance of another, as in the case of Weatherly and Lyon, already cited. I speak of ordinary warrants of resurvey, of which the primary avowed object was generally to remove uncertainties respecting the bounds, quantities, &c. of the original tracts; and it was certainly not allowed, except on very special grounds, for a person to resurvey, for this purpose, lands in which he had no interest: (*f*) still less could he be permitted to resurvey the land of another for the purpose of discovering and taking up the adjoining vacancy, except so far as the running the lines of that other person's land was an operation auxiliary to the resurvey of his own. It was therefore, at all times, necessary for a person, in applying for a warrant of resurvey, to state a title to the land in question, by saying that he was seized in fee, or by some other (*g*) expressions importing that he was the right-

(*f*) There has at all times been an idea, natural enough to the parties interested, and which the government never took any positive measures to discountenance, that the owners of land have some kind of preferable claim to the *vacancy* adjoining them, and as to *surplus*, it was still more natural for them to consider it their own, since it was actually within their bounds. Through respect to this excusable prepossession, alone, the government would not so far encourage land-hunters as to permit them to resurvey the lands of others for the discovery of vacancy; and if any thing less than a real title would serve for obtaining resurvey warrants a pretence of title would never be wanting where an advantage was expected. Vacant land could undoubtedly be taken in other ways; but this though often complained of by those whom it adjoined, and who perhaps had hoped to hold it without payment, had less the appearance of injury than a resurvey at the pleasure of any person who chose to make it.

(*g*) Our resurvey warrants, at present, invariably state that the party is "seized in fee," but formerly, there was a variety of special matter contained in the warrants, either written by the persons who applied, or by the clerk, on their information, in preparing their petitions.

ful owner of the land. This was often done, especially in the early periods, by a full recital of the surveys, patents, and conveyances through which the title was derived: in later times I find instances of a more doubtful manner of setting forth a title, such as a party's stating that he had "*just right*" to the land, but it is plain that no person applied for a warrant of resurvey without pretending to have *a better title than any one else* to the land in question, and it was with good reason that the government was careful to issue those warrants to none but the true proprietors, since, besides that a patent of confirmation was as now a regular consequence of a warrant of resurvey, the patents of the original tracts were formerly *vacated upon record*, by which, if such proceeding should be had upon a false title, the real owner would be, at least, subjected to the necessity of taking some legal course to re-establish his right. Of the cases which I shall here select to illustrate these remarks, the first may appear rather to contradict the principle above stated, as the warrant is issued to a person who had, in strictness, only a reversionary right, if so much; but the proviso in favour of the acknowledged owner remedies that irregularity. In the second a resurvey warrant is expressly vacated because the party was not seized in fee.

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May 28th, 1715.—" Whereas Thomas Mudd of St. Ma-
" ries county, by his humble petition to his lordship's agent,
" has set forth that there is a piece of land lying in Charles
" county, containing about six hundred and fifty acres, called
" Carnavan formerly taken up by John Piles, and from him
" descended to Joseph his son and heir at law, who conveyed
" the same to the said Thomas Mudd's father, who by his last
" will and testament in writing devised the said land unto
" one of his said sons called George Mudd and the heirs of
" his body: that the said George hath unfortunately become
" mad and utterly bereaved of his understanding, without any
" hopes or expectation of ever being reduced to his senses;
" and the said Thomas is credibly informed that some have
" laid common warrants on part of the said land, and do ma-
" liciously endeavour to obscure the bounds thereof, where-
" fore the said Thomas having a just title in reversion to the
" said land as being heir to his deceased father, as also for
" and on behalf of the said George, humbly prays a speciall
" warrant to resurvey the said land in order to ascertain the
" bounds thereof, with power to include the surplus (if any,)
" and that upon return of a certificate of such resurvey, and
" complying with his lordship's present conditions of planta-
" tation, he might have letters patent of confirmation for the

" same, which was granted him with a reservation to the said " George's right in case he recovers his senses.

" Lay out, therefore, and carefully resurvey for and " in the name of the said Thomas, yet for the use of the " said George if in case he recovers his senses, the afore- " said tract of land according to the ancient meets and " bounds, including what surplus land shall be found " therein contained: not running your lines, &c. (*h*) " PROVIDED a title be produced for the above land " prayed to be resurveyed, patent is to issue; if other- " wise, the certificate to be cancelled and laid aside."

"The title is made appear."

LIBER A. A. fol. 431.

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" Robert Freeland of Calvert county, by his petition (September 23d, 1734) set forth that he was seized in fee of and in two hundred acres of land, part of a tract called Freeman's (or Trueman's) Choice; which said 200 acres had " by mesne conveyances, alienations and mutations of possession become the right" of him the petitioner " *under metes and bounds:*" That upon inspection he apprehended there might be surplus land within the said bounds, and vacancy contiguous thereto. He therefore prayed a special warrant to resurvey the same, &c."

In the margin of the record appears the following entry:— " This warrant is made void, the petitioner not being seized " in fee, as therein is set forth. TEST,

" G. BEDDOE, Clk. L. O."

LIBER E. E. fol. 448.

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It is proper to observe that immediately after the above-mentioned warrant, and on the same day, is recorded a *special* warrant in the said Freeland's name for forty acres adjoining the same land. His want of title therefore was immediately discovered, and the vacating of the warrant of resurvey may have been at his instance, but the proceeding shews that the want of a title in fee was sufficient ground for annulling a warrant without the objection being made by caveat.

—

" Deborah Carnall setts forth that a certain person had surreptitiously obtained an order for the resurvey of a tract of land called Graves, upon a suggestion that it was his property and in his possession, when in fact it was the property of the petitioner.

(*h*) This appears to be a particular order added probably at a subsequent time to the record of the warrant.

" Whereupon it was ordered, that all proceedings upon the said surreptitious order and warrant be stopped, and set aside, and that warrant of resurvey issue to the petitioner."

LIBER C. B. fol. 321.

We have hitherto, in treating of this point, gone upon the the supposition that the lands to be resurveyed had been patented, so that a title in fee vested somewhere—but, although resurveys were generally made on patented lands, they might be made on lands lying on certificate, and to which no person, of course, had a complete title; but the principle was still the same;—The owner of the certificate, had the *best* title, and no one else could resurvey the land.—It does not even appear to have been necessary under the proprietary government that the original tracts should be patented previous to a patent of confirmation on the resurvey, and it was, in fact, needless, for, as I have just remarked, it was the practice to vacate the original grants on record when they were covered and superceded by the patents of confirmation. The patents themselves appear in the early times to have been brought in and surrendered in the office, and in subsequent periods the order for a resurvey always contained a proviso that the original patent should be vacated. I shall not pretend to account with certainty, for the motive of this regulation or to state its effect upon the dates of titles. It had possibly some reference to the proprietary's system of revenue by simplifying the rent rolls, in discharging from them those tracts which were sunk in resurveys, and taking up in their stead the new patents, increased by the surplus and vacancy added. But the disadvantage, in the loss of eldership, by forfeiting the original patents and certificates, if such was the effect, must have been a greater impediment to resurveys than can be reconciled with the inducements of the proprietary to encourage them. I rather suppose, however, that, in practice, and in general acceptation, the claims of the original tracts as to seniority were not annulled by the vacation of the grants under which they had been held. Much stress was always laid upon a *survey*, duly returned to the office, although afterwards surrendered, or even vacated on the ground of error; insomuch that the land included in such surveys, though never cultivated or improved, was, as appears by various instances, deemed not to be subject to the operation of a common warrant: and if a former survey, though annulled, left upon the land the stamp and character of cultivation it might with equal reason leave it entitled to its original privilege of eldership, and with greater reason if the land by actual cultivation and improvements declared its own

antiquity, as must often have been the case with tracts sunk in resurveys.

The opinion which is understood to have been given by the late general court, that patented lands take their age from the date of the certificate, is countenanced by all that I observe in the ancient practice upon that subject, and although a patent should be vacated it does not perhaps follow that the effect once given to the certificate is withdrawn—At present the original patents are not vacated on resurveys, and consequently their age is left without dispute. Patents of confirmation also do not issue until the originals are patented, which they frequently are not when the warrants are taken out—These changes took place before the termination of the proprietary government, for nothing absolutely new has been introduced into the practice under the present one in these respects, but the usages above described were of so long standing as to require the notice that has been taken of them.

ASSIGNMENT AND RENEWAL OF WARRANTS OF RESURVEY.

It does not appear that warrants of this kind could ever have been considered as conferring a right to take up vacant land, without the circumstance of contiguity, or some direct reference, to the land ordered to be resurveyed ; and it follows that assignments of resurvey warrants cannot have been frequent ; for, with the warrant, it would appear necessary to transfer the object on which it was to operate.—Warrants of resurvey were not only *special* in respect to location, but they had also a more special and adherent relation than original warrants to the persons to whom they were granted ; for, any man possessed of *land rights*, might have a warrant located adjoining a given tract ; but supposing the design to resurvey the same tract, none but the person owning, or entitled to, that land could have the warrant, or at least could avail himself of it.—Warrants of resurvey, therefore, were not assigned and bartered like primitive warrants ; but the privilege of transferring them does not appear to have been withheld or contested. The ingenuity of land mongers, and the occasional pliability of the proprietary's officers, have concurred to produce particular cases tending to confound the original distinctions between the different kinds of warrants ; but, it may be said with certainty that it never was the *practice* of the land office to authorize or permit the using a warrant of resurvey as a common or general warrant, further, than that by an abuse of the original license and intention, in regard to adjoining vacancy a person

might, in a resurvey of one acre, take in a thousand more, and obtain the advantage of a credit of two years, instead of paying immediately for the vacant land, as must have been done in taking a primitive warrant.

In respect to renewal, warrants of resurvey appear to have been under the same rule as original ones, that is, to speak of the more recent periods of the proprietary government, they might be renewed every six months during the two years which were limited for the taking out patents under them as originally issued.—In the early times however, upon neglect to execute a resurvey warrant, a new one, or an allowance of further time, was most commonly prayed by *petition*, as indeed was almost every thing of a *special* nature; for after the direction of land affairs had by degrees, ceased to be altogether in the hands of the governor and secretary, and was made a standing business of the former, conjointly with his council, the clerk of the board, to whom, (still subordinately to the secretary of the province) the immediate issuing of warrants continued to be intrusted, was not allowed to act without direction in questionable cases, but was recompensed for the abridgement of authority by the multitude of proceedings to which the system of petitions gave rise, and for which he had fees, settled and ordained by the governor. It was on this ground perhaps that so much formality attended all proceedings relating to resurveys. The difficulty heretofore mentioned of obtaining warrants of resurvey was more a grave artifice to enhance the value of those warrants than a necessary precaution against their abuse. John Llewellin, the first register, and who may be called the father of the land office, understood very well the effect of this kind of management. The petitions of applicants appear, from their uniformity during his time, to have been generally prepared by him, and from the style of them, as well as that of the consequent orders and warrants, which usually contained the same feeling recital of *trespasses*, *hardships*, *poverty*, &c. it was difficult for the party on getting his warrant not to believe that he had been particularly favoured, when perhaps the government was interested, on account of the probable discovery of surplus land, as much as himself in the resurvey. But, although Llewellin appears to have had much to do in devising rules and forms, it was the policy of *the government*, as well as his, to give to the proceedings, in regard to resurveys, an air of kindness and favour; for there never was a period at which some doubts and dissatisfactions did not exist in Maryland respecting the principles and conduct pursued by the proprietary and his officers, in land affairs. The enhancing the conditions of plantation, the exaction of payment for surplus

lands, and the vast quantity of land that, by means of escheat, was sold a second time for the benefit of the proprietary, or given to his friends, who were not always the favourites of the people; these and other causes, good or bad, of complaint, produced a temper in the community that imposed on the government the necessity of a system of apparent condescension, for which, not meaning to make real sacrifices, they invented occasions, that were attended with no cost.—It is in this way that I interpret the practice of petitioning for the renewal of resurvey warrants among other things, for these observations are too general to apply distinctly to that custom; but they serve in some degree to explain the seeming inconsistency of urging people by repeated proclamations to resurvey their lands, and yet subjecting them to a tedious ceremonial when they applied for warrants.

MISCELLANEOUS CASES OF RESURVEY.

" Thomas Phillips of Talbot county by his petition to the governor sets forth that on the 13th of August 1666, William Smith of St. Mary's obtained a patent for three hundred acres of land called *Copill*, lying in Talbot county, which he sold in October following to Thomas Ingram, who sold the same to the petitioner for 4500lb. of tobacco, but was drowned before he had received full payment or made any legal conveyance to the petitioner: That the said Ingram left a will in which he bequeathed 10,000lb. of tobacco to William Vaughan, his wife's son, to be laid out in land, and by a codicil directed that the land sold to Philips, or the tobacco if Philips completed his payment, should go towards the said legacy: That Robert Dunne and Desborough Bennett who were named executors by the said Ingram renounced the trust, and that administration was granted to his widow, who afterwards intermarried with Jeremiah Eaton: That the petioner paid to the said Eaton for the use of Vaughan what remained due on his purchase aforesaid; cleared and built upon the land, and obtained patent for 100 acres more adjoining thereto—that he believes there is surplus land contained within the bounds of these two parcels, and that there are some disputes between him and his neighbours about the bounds and marked trees thereof. He therefore prays a warrant of resurvey to be directed to William Hemsley, deputy surveyor of Talbot county and that for the deciding all controversies concerning bounds, the said surveyor be impowered to call before him such witnesses as he shall think fit, and examine them on oath:—also that the two former patents may

be vacated upon record, and that the petitioner making good rights for the surplusage, may have patent of confirmation for the whole."

LIBER 17, folio 585.

Every paper that has the least relation to the transfers aforesaid of Copill is recorded at large, at the end of which a warrant, reciting all the facts, and admitting Philips's title is issued agreeably to his prayer.

"Sarah Pile, widow, and Joseph Pile, son of John Pile deceased, by their petition set forth, that the said John had a warrant granted to him on the 19th of October 1653, for one thousand acres of land as the gift of the proprietary in consideration of services rendered and losses sustained by him in the troubles of the province, that he had in consequence a survey made at the head of Wicomoco river, but that it being represented that the said survey was within his lordship's reserve of Calverton, there was some doubt about the propriety of issuing patent for it, and his lordship upon the application of the said John Pile ordered, on the 4th of September 1657, that he should have three or four hundred acres at that place, where he had built and seated, and the remainder in any part of the province. That upon the said Pile's further petition respecting the said remainder, being six hundred acres, his lordship was pleased to order that they should be laid out adjoining the four hundred which he had been permitted to retain of the original survey and the whole erected into a manor agreeably to the original design, that this was done accordingly, and a patent passed as for a manor by the name of Sarum, being the land on which the petitioners reside.

"That the petitioners are informed that by reason there is a great quantity of marsh between the water and the said land, (which marsh was not wont to be taken up in those days) there is more than a thousand acres contained within the bounds, and also that there is to the said land a greater breadth allowed upon the water than was allowed by his lordship's then conditions of plantation, which might (if severely looked into) create great trouble to the petitioners, the present possessors of the land, and cause the said grant to be vacated upon record, and render the proprietary's noble gift to the aforesaid John Pile of no value.

"They therefore pray that the said land may be granted to the petitioner Joseph Pile with reservation of one third thereof to the petitioner Sarah Pile during her life—that all former grants touching or concerning the same may be vacated upon record, and the new grant passed to the said Joseph Pile as his (then) present lordship's bountiful gift, without men-

tion of any conditions of plantation whatsoever, and that for ascertaining the true contents thereof, a warrant of resurvey may issue directed to such person as his lordship shall please to appoint, &c."

" In answer to which his lordship declared thathe would not take advantage of the errors committed in the former survey, so as wholly to vacate the patent, but would allow the petitioners their quantity of one thousand acres; and therefore ordered a warrant to issue to lay out the said quantity; beginning where the first survey began, *giving its due breadth from thence by the water side*, according to the conditions in force at the time of the original survey, with liberty of including what marsh land may lie contiguous; and that captain Randolph Brandt, of Charles county, be for the purpose specially appointed to lay out the same, and the warrant to be to him directed after being first viewed and signed by his lordship, and that on return of a certificate, patent of confirmation issue as prayed.

COUNCIL BOOK C. B. for lands, fol. 74.

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" William Thomas, Thomas Atchison, John Douk, Thomas Morsell and George Usher, all of Kent county, by their petition, set forth that they are seized and possessed of a tract or parcel of land in the said county, called Killingsworthmore, originally surveyed and laid out for Gilbert Clarke, and after several assignments parcelled out by metes and bounds to different persons, from whom by conveyances and devises, it is in several parts become the property of the petioners: that upon inspection into their title they find no grant to have been ever issued for the said land. They therefore pray a special warrant to resurvey it; and that upon return of a certificate of resurvey, a patent may issue to them for the same, agreeably to their respective proportions therein."

LIBER E. E. fol. 82.

The warrant, after directing a resurvey and the return of a certificate in the usual form, instructs the surveyor to return also " separate certificates, if required, of each person's " parts thereof according to their rights, by their deeds of " bargain and sale or bequest, with how much surplusage and " vacancy, in order that each may have separate grants," &c.

—

" Whereas there hath been committed a mistake (as I suppose) in the certificate of a parcell of land surveyed by Mr. Robert Clarke, for one William Pell, which land is now in the possession of George Saughier, in which certificate is set down either instead of a line west and by south, west and by north or else instead of east and by south east and by north to Pennington's Ponds, which east and by north line

will never fall into Pennington's Ponds, but fall short, depriving the said Saughier of near upon half the land intended at the first survey, and especially the land next adjacent to the said Pennington's Ponds, at which Ponds the above said survey had its first beginning.

" Now it is so that if the certificate had said west and by south the line east and by north would have fallen into Pennington's Ponds, but not without prejudice to one Adam Dulap, whose line and Saughier's line are both one, and if instead of a line east and by north, the certificate had said east and by south to Pennington's Pond, leaving the west and by north line as it is, it would have deprived one William Ramsey of a good part of his land—

" 1. Therefore my opinion is, that to do each man right, that the said George Saughier, obtain*eth* a warrant from the hon'ble governor, to the end that he may get a new survey made of his land.

" 2. That the land to be laid out by my cousin George Yate, who is best informed of the situation thereof.

" 3. That captain Burgess and captain Brown, commissioners of Ann Arundel county, be appointed by the hon'ble governor to assist at the ending of the difference to see that equity may be done, and that Adam Dulap and William Ramsey be there present—

" 4thly. Having always regard at the naturall bounds, and that Dulap and Ramsey may equally sustain damage, that a line be drawn west from Pennington's Ponds and also a west line drawn from the point by the creek where the poplar stood, and a paralell be drawn with South river from the end of one of the west lines till it interstects the other at such a distance as shall allow the said Saughier two hundred and eighty acres of land.

JEROME WHITE, Survey. Genll."

On the back side of the aforementioned opinion of the surveyor generall was thus written, viz.

" *To Captain Burges and Mr. Richard Ewins.*

" By the inclosed writing you will find that the surveyor generall has made a report of a difference about a parcel of land in the possession of George Saughier, and his opinion of the whole matter; it is thought requisite that the said Saughier have a west line run instead of west and by north, which if you find to be no prejudice to any person, you may cause George Yate to lay it out accordingly; and for his and your so doing, this shall be your warrant. Given under my hand, this thirteenth of March 1666.

CHARLES CALVERT."

"George Saughier, 280 acres, Margret's Fields, charged to the rent roll } To the right hon'ble the lieut. gen. &c. March the 25th, 1667,

"Laid out for George Saughier of the county of Ann Arundell, merchant, by virtue of a special warrant granted unto the said Saughier, from the right hon'ble the lieutenant general, a parcel of land called Margret Field, lying in the said county, formerly laid out by Mr. Robert Clarke, beginning at Pennington's Ponds, near the mouth of the said Ponds, as near as an east course will carry from the north side of a point called Beare Point, and running from the south river side west over the ponds to a small poplar markt with four notches on the north side of the said point, and continuing the said course running over near the head of Hasting's Creek, for the length of two hundred fifty five perches, to a bounded red oak, north eighty four perches to another bounded red oak, bounded on the north by a line drawn east to the said creek, then over the said creek, and bounding on the south side of the said creek, to the said river, then bounding on the said river to the first bounds, containing and now laid out for two hundred and eighty acres, more or less, to be held of the mannor of Ann Arundell. Per me GEORGE YATE."

On the back side of the said certificate was thus written, viz.

"Aprill the 15th, 1670.

"In case the warrant from the lieutenant general for this survey be produced, I am of opinion that George Saughier ought to have patent for this land.

PHILIP CALVERT."

LIBER No. 12, folio 557.

"*Petition of John Richardson*,

"Sets forth that John Edmondson, about fifteen years past had a pretended right or interest in about 800 acres of land, reputed then to be in Talbot, but now known to be in Dorchester county, by colour of a survey, made by George Richardson, deceased: That Thomas Skillington having a similar right to 300 acres adjoining the former, these two by agreement relinquished or let fall their surveys, and had the lands resurveyed into one tract, which was patented to Edmondson, by the name of Richardson's Folly. The petitioner had lately taken up a parcel of land containing 982 acres, called Willingbrough, bounding upon the lines, on one side, of Richardson's Folly, as expressed in the patent of confirmation. Edmondson alledges about 150 acres, part of this land to be his right, as belonging to the survey of 300 acres, made as afore-

said for Skillington, though not included in the patent of confirmation, and as having been surveyed, not capable of being taken by a common warrant. He threatens the petitioner that he will procure a special warrant for the said 150 acres.

" Petitioner therefore prays, that as the said parties voluntarily let fall their surveys and took patent of confirmation for as much of the land as they thought proper, holding the overplus as if it had been included in the said patent, without paying rent for the same, he may have a warrant of resurvey on the 300 acres, formerly laid out for Skillington; and that such part thereof as may be found within the tract taken up by the petitioner, and not comprehended by the aforesaid patent of confirmation may be granted to him—he making good rights for the same."

Warrant of resurvey issued to Thomas Pattison and Henry Parker, (specially appointed for this case) to resurvey the tract called Richardson's Folly, according to its ancient metes and bounds, &c. to return certificate under their hands and seals—the expences to be borne jointly by Edmondson and the petitioner, the overplus (if any) appearing on the resurvey, free to be taken up by any person, &c.

CHAPTER VIII.

FURTHER HISTORICAL NOTICES.

It has been stated, in concluding our account of the settlement of the province, that the *powers of government*, which had been wrested from the proprietary by Cromwell, in the year 1654, and recovered at the restoration of Charles II. continued in the hands of the Baltimore family until the period of the *English* revolution. The original proprietary, of course, enjoyed them during the remainder of his life, though not without opposition, and great perplexities, which, however, he surmounted by firm and prudent conduct, and by a strict forbearance from any act that could impeach his due allegiance and fidelity to the government of the mother country: but the weight of those disasters which he had been fortunate enough to avoid, soon began to fall upon his son and successor Charles Calvert, who had for many years been governor of the province. He, as has been before mentioned, went to England

in the year 1684, being called thither to defend himself against several heavy imputations, one of which, namely, that he had obstructed the custom house officers in the collection of the parliamentary duties, was unluckily, not without foundation. The other complaints turned chiefly upon his alledged partiality to those of his own religion in the disposal of offices; and he was required, under the threat of a writ of quo warranto against his charter, to reimburse a considerable sum stated to have been lost to the customs by his interference. He submitted to this exaction, and continued to parry the efforts of his enemies, till about the close of the reign of James II. when the violent animosities that prevailed in England against the religious faith professed by that monarch, reached the province of Maryland, and produced similar effects. The moment that James's abdication, and its immediate consequences, were announced, this spirit displayed itself in a manner not to be controuled. The administration of lord Baltimore had, upon news of the seeming invasion of England by the Dutch, put the province into some state of defence, and took other measures of security, which to the jealous conceptions of the people indicated a design to strengthen their own hands to the danger of the protestant colonists. The first suggestion of this idea was sufficient to produce the highest degree of alarm and exasperation. The proprietary had, moreover, been unfortunate in the miscarriage of the orders sent to his *deputies* to proclaim William and Mary, or at all events it had not been chearfully and seasonably done: All these circumstances concurring to impress on many a degree of real alarm, and to furnish the more designing with means to augment it, an armed (*a*) association was at length formed in 1689, "for "the defence of the protestant religion, and for the asserting "the right of king William and queen Mary to that province "and all the British dominions;" but the real and open object of which was the immediate suppression of all authority in those whom the proprietary had left charged with the administration of his government. The deputies made some attempt towards defence, but wanting support, surrendered their powers and their persons to this violent association.

(*a*) At the head of this association was a certain John Coode, who is treated by writers on the affairs of Maryland with still more severity than either Cleyborne or Fendall. It is not an agreeable thing to abuse men a hundred years after their death, and I shall therefore say nothing further on this subject. In regard to the manner in which I speak of the popular alarm, and its effects, it will be deemed excusable, I presume, that I do not admit there was a *plot to massacree* the protestant inhabitants, and that I cannot therefore consider the alarm and ferment here related as having any just foundation. As to spleen or prejudice in regard to those long past events, I feel none, and trust therefore that none will appear in the slight references I have had occasion to make to the subject of religion.

The convention in England seconded this proceeding by formally taking the government out of lord Baltimore's hands, and affairs were managed under some kind of temporary administration until the year 1692, when a governor and council were appointed by the king, and all subordinate officers, even those concerned in the affairs of land, were commissioned by the same authority. The adherents of the proprietary were ousted, and made, by means of a religious test, which they could not honestly take, incapable of holding employments in the new administration. So far as concerned affairs of government, lord Baltimore submitted without resistance; but, in what related to land transactions, he struggled hard to maintain his rights, and was assisted in this object, with great zeal and intelligence, by his (*b*) agents and other officers in Maryland. Various questions and disputes took place concerning the appointment of surveyors; the state of the land office and records; the pecuniary rights of the proprietary, the validity of his conditions of plantation, and in short the nature and extent of the powers still attached to him as absolute lord and owner of the soil: for, in this respect the rights conveyed by the charter had never been expressly abridged. The king's secretary of the province, Sir Thomas Lawrence, claimed the right of issuing land warrants, and more especially those of resurvey, for which he required and received fees, while the agent of the proprietary refused to issue patents without the same fees were paid to the officers under his direction. The secretary maintaining his point, lord Baltimore raised his conditions of plantation. The government remonstrated against this procedure, as an hardship on the people, and an impediment to the growth of the colony. The proprietary, through his agent, offered to rescind his new conditions, if the affairs and emoluments of the land-office were left to his officers. Many propositions and proceedings took place, as well in the legislature as in the executive branch of the government, upon these subjects. The custody of the land records was an object of particular solicitude; the agent strenuously demanding them, as necessary to the discharge of his duties as chief officer in land affairs; and the assembly insisting that they should remain in the secretray's office for the inspection of the people, who were interested in them. Appeals were made to the board of trade and plantations, and to the crown itself: orders were, in consequence passed, which composed in some degree these discordances, and land affairs went on, in a way equivocal and unsettled indeed, but so

(*b*) Henry Darnall, Esq. already the proprietary's chief agent, was commissioned anew in 1695, with powers similar to those of the late land council, and the office was subsequently filled by Charles Carroll, Esq. with authorities still more extensive.

as to fulfil essential purposes; surveys being instituted chiefly by the government, while the consequent grants were issued by the officers of the proprietary. This state of things continued, but with various fluctuations, and some absolute suspension of the business of the land office, throughout the successive reigns of William and Mary, king William (alone) and queen Anne. Upon the accession of king George I. in 1715, the powers of government were restored to the then proprietary Charles lord Baltimore, grandson of the (c) former Charles, who was at that period found to have been educated in the established religion of England, and had thus become capable of holding governmental authorities subordinate to the crown. This event forms a new æra in the land affairs of Maryland. The proprietary sent out a commission to the king's governor, Mr. Hart, to continue in the same station under his authority, and that gentleman accepted the trust, but soon became dissatisfied with his situation. Mr. Carroll who had long held the place of chief agent, and who about this time had gone to England, brought out with him a new commission which bore evidence of a greater change in the proprietary's circumstances than in his sentiments by vesting the same agent with additional powers appertaining seemingly rather to matters of government than to the functions of a revenue officer. The governor offended at the abridgement of his own power, desired to be recalled, and was, in effect, some time afterwards required to appear in England, in order to defend himself against several charges that had been made against him: but, previous to this, although the government and the agent now held their authority from the same source, they were far from having a good understanding respecting the affairs of the land office. Governor Hart refused to commission the surveyors appointed by the agent for the several counties, unless they would qualify in the form required by law (by taking the oath of abjuration, &c.) The agent accused the governor of having shut up his lordship's land office by withholding the necessary commissions from his officers duly appointed: the charge was retorted, and much dispute and recrimination continued to agitate the provincial government, and to affect the course of land transactions until the departure of Mr. Hart, when these unnecessary violences seem to have subsided. From this time the affairs of the province

(c) The second proprietary never returned to the province after leaving it in 1684. He died on the 20th of February 1714—15, leaving the proprietaryship, to his son Benedict Leonard Calvert, who had scarcely time to notify his succession by letter to Mr. Carroll and to desire copies of the commission and instructions under which that gentleman acted, when he also died, and was succeeded by his son Charles then a minor, and under the guardianship of lord Guilford who joined his name to that of the proprietary in all public acts.

underwent no further revolution of any importance. The occasional changes which still took place in those of the land office, will presently be noticed.

The history of Maryland abounds in other events and incidents important in themselves, but which have, in general, too little connection with the practice of the land office to require to be noticed in this work. Even those which have a direct relation with land affairs are so blended in their origin or effects with matters of a different nature, that it is difficult to touch upon them without being led into subjects purely historical, and such as it would perhaps be better to pass over entirely than to notice in a partial and imperfect manner.—Among these are the disputes, proceedings, royal orders, and agreements relative to the bounds of the province; and the various transactions, wars, treaties, &c. between the colonists and the Indians. Either of these subjects is too copious to admit of any thing like a regular and full account in the space that could here be assigned for the purpose. The latter has been already dismissed, with a particular reservation. In regard to the disputes of limits, their influence upon some of the (*d*) conditions of plantation and the range which has been taken in other matters, seem to require that the general and most prominent facts at least should be stated. The first contest of lord Baltimore relative to the extent of his grant was with the Virginians: the dispute turned upon the precise situation of Watkins's Point, on which depended the cross line that was to divide the county of Northton or Accomack in Virginia from the districts of Annamessex, Monoakin, &c. in Maryland.

The proprietary's governor claiming the beginning of his patent where it was afterwards acknowledged to be, and finding that settlements had been commenced in that quarter under the authority of Virginia, commissioned John Elzey and two other persons to repair to the place, and grant warrants, under particular and favourable conditions, to such as would take them. On the arrival of these commissioners, and notice of their errand, a demand was made by Edward Scarborough, surveyor general of Virginia, that they should acknowledge obedience (*e*) to his majesty, as being out of lord Baltimore's jurisdiction, and he proposed at the same time the appointment of commissioners to determine the situation of Watkins's Point. Elzey and his associates paid no regard to this requisition, but continued to fulfil the views of the proprietary by encouraging surveys and settlements under his patronage. The dispute was at length terminated by Philip Calvert, chancellor of Maryland and the above

(*d*) Those which relate particularly to the Eastern Shore.
(*e*) Virginia was under a royal, and not a proprietary, government.

named Edward Scarborough, appointed commissioners for the purpose, who on the 25th of June 1668, being met on the spot, signed two instruments of agreement by one of which they determine "the point of land made by the north side of Pocomoke Bay and south side of Annamessex Bay" to be *Watkins's Point*, intended in lord Baltimore's charter, and the proper divisional line between Maryland and Virginia to be an east line run by them, "agreeably with the "extreamest part of the westermost angle of the said Wat-"kins's Point over Pocomoke River to the land near Robert "Holston's, where, say the commissioners, *We* "have mark-"ed certain trees which are so continued by an east line "running over Swansecute's Creeke into the marsh of the "sea side with apparent marks and boundaries," &c. By the other instrument they adjusted every thing that concerned the rights and interests of those patentees or settlers whose situations were changed by the settlement of the said divisional line.

(*f*) The next affair of the kind arose from a settlement of Dutch on the borders of Delaware Bay.—These people were seated under a governor general and council, deriving their authority from the states general of the united (Dutch) provinces, or more directly from the West India company of those provinces.—The territory to which they laid claim was called by the general name of the (*g*) *New Netherlands*, and their immediate colony on the Delaware, by that of New Amstell. Although lord Baltimore could not have been ignorant of the existence of this settlement, or of the grounds of their alledged right, he did not think proper to take any notice of them, until the aforesaid governor, perceiving that the pretensions of Maryland extended quite across the peninsula, opened a correspondence with the proprietary's governor Fendall, but was in return ordered, peremptorily, to break up his establishment, and depart the province, the lands so occupied being, as Fendall alledged, within the limits of lord Baltimore's grant, (which, supposing no prior right, they certainly were) and threatening him with force in case of refusal. Colonel Utye, who was dispatched with Fendall's answer had however, directions to invite those people to take their lands of the proprietary, under his conditions of plantation, in which case they were promised full "protec-"tion in their lives, liberties, and estates," &c. Shortly after, two agents or ambassadors appeared at Saint Mary's, with a letter and credentials from *Stuyvesant* the before men-

(*f*) It is not meant that this began after the other was terminated.—These two contests for territory and a more serious one with the Indians, in the same quarter, were going on at the same time.

(*g*) Now Newcastle.

tioned governor. In these he complained highly of the mission and conduct of Utye, and shewed, in a succinct way, the ground of the Dutch claim to the territory which they had colonized: but the embassadors delivered a long manifesto, in which they traced the discoveries of America, and the settlements on its coasts, from the time of Columbus; alledged a patent from the States General, confirmed by agreement with James King of England, and asserted that the Dutch had a settlement about Cape Henlopen even before the planting of Virginia, but that the adventurers were all destroyed by the Indians. Finally, having stated their title in the most minute manner they declared their resolution to support it by arms and reprisals if necessary. But, although they kept possession during the subsequent period of disturbance and weakness occasioned by Fendall's treachery, and the disaffection of other persons of leading note, the proprietary's son Charles Calvert, upon assuming the government of the province in 1662, obliged those Hollanders to abandon the (*h*) Whorekill, and the country about Cape Henlopen, of which he immediately took possession, and to retire to Newcastle, at the northern extremity of the peninsula, where, in two years after, they had to submit to Sir Robert Carr, who in conquering and annexing to New York what have been called the three lower counties admitted those foreigners to the privileges of British subjects. Many of them, however, had previously emigrated, if it may be so called, into Maryland, where they became naturalized, and incorporated with the English. Among these was Augustine Herman one of the embassadors before mentioned, well known by his grant of Bohemia manor in Cecil county; and several others of the principal Dutch colonists accepted of grants on the Eastern Shore, where and in the Delaware state, their descendants still remain. Thus ended the Dutch settlement of the New Netherlands on the *South River* as these people called Delaware Bay and, for the present, the contest of Lord Baltimore for territory in that particular quarter.

The disputes with Pennsylvania, which comprehend, incidentally, the rise of new questions relative to the Delaware plantation, and its final abstraction and separation from the province of Maryland, began in 1682, and were not completely settled, until a short time before the period of the American Revolution. The celebrated William Penn, the founder and proprietary of Pennsylvania, who obtained the grant of that extensive region in 1680, had scarcely commen-

(*h*) A district on the western margin of Delaware Bay near Cape Henlopen, or, as it is described on record "within the mouth of the South Cape." The name, corrupted from Hoore-kill, is I am informed, no longer known on the Eastern Shore.

ced the settlement of his colony when, extremely desirous to open a door, by the Chesapeak, for peopling it, (*i*) he persuaded himself that lord Baltimore had extended his province beyond its true limits, and signified by letters to some of the principal inhabitants of the Eastern Shore that their lands were in Pennsylvania, and that they ought not therefore to pay rents and taxes as belonging to Maryland. The best informed of those planters paid no attention to this notice, which they knew to be erroneous; but others, either deceived, or willing to take advantage of the intimation, determined to pay nothing, hoping, as a certain writer observes, to live under no government. This, with the provocation and embarrassment which it gave to lord Baltimore, laid the foundation of a controversy which continued too long, and with too many circumstances of violence, not to have been very prejudicial to the advancement of both the provinces.

The termination of the second, or northerly, line of Lord Baltimore's grant seems to have been the point immediately in contest. The first attempt to determine this did not promise a result favourable to Mr. Penn: on the contrary it *appeared* by an observation taken at Chester, that the 40th degree would carry the boundaries of Maryland up to the Schuylkill. The ascertainment of lord Baltimore's limits in this way was afterwards evaded by Markham, the kinsman and agent of Mr. Penn, and that proprietary himself, informed of the disadvantageous appearances resulting from the trial just spoken of, came out from England provided with a better method of carrying his point. In 1682 he met Lord Baltimore by appointment in Maryland, and produced a letter from king Charles II. directing the settlement of their mutual claims, and requiring that the northern limits of Maryland should be determined by the admeasurement from its southern boundary of *two degrees*, according to the *usual* computation of *sixty* miles each—Lord Baltimore objected to this that his patent mentioned no specified number of degrees, but went absolutely to the 40th degree of north latitude;—that nothing therefore remained to ascertain but, *where* his northern line intersected the Delaware, which he proposed to determine by an observation on land, by a sextant of six feet radius belonging to his opponent; and in reference to the king's opinion that he must necessarily begin at the degree 38, he alledged that his charter said no such thing, and that a royal mandate could not take away what had been granted under the great seal. Mr. Penn's argument in opposition to this was, that Watkins's Point was

(*i*) This and some other facts are derived from the historical sketches of Mr. Chalmers, who certainly shows a leaning to the Maryland side of the contest, but who nevertheless cites authorities for what he advances.

presumed to lie in the 38th degree, and that Virginia might otherwise be wronged if her claim should be to that degree, &c. He proposed finally that to discover the fortieth degree an actual mensuration should take place from the Capes of Virginia, the true situation of which had been once ascertained, and was confirmed by tradition and common fame; or according to his own account, given in a letter to the committee of plantations, he proposed that lord Baltimore should measure even to two and a half degrees from Watkins's Point, at sixty miles to a degree, which he alledged was the proportion intended in the grant, and the (*j*) usual computation of a degree at the time when it was obtained. No compromise however was made; and a meeting at Newcastle, in the succeeding year was attended with as little success; for Mr. Penn evidently wanted to possess the sources of the Chesapeak, and his opponent, if not for other reasons equally desirous to prevent it, was at least afraid of permitting, upon any grounds, an encroachment upon his established bounds.

In the mean time, Mr. Penn, determined in some way to extend his acquisition southward towards the Chesapeak, had, after much solicitation, obtained from the duke of York a grant and conveyance of the Delaware colony, comprehending the town of Newcastle, with a territory of twelve miles around it, and the tract of land extending southward from it upon the Delaware to Cape Henlopen. The right of the duke to make this conveyance, appears to have been very slightly founded. But means were soon found, independent of that question, to destroy lord Baltimore's interest in the territory. The duke had now become king James II. and, his disposition seconding the efforts of Mr. Penn; the right of the proprietary of Maryland to the lands on the Delaware was referred to the committee of plantations, who in Novemder 1685 reported, that the land intended to have been granted to lord Baltimore was such as was *inhabited by savages*, but that the tract now claimed by him had been *planted by Christians antecedent to his grant;* yet to avoid further differences, the peninsula between the bays of Chesapeak and Delaware should be divided into two equal parts, by a line drawn from the latitude of Cape Henlopen to the fortieth degree, the portion lying towards the Delaware to belong to the king, and the other to lord Baltimore. This adjudication was founded altogether upon the traditionary settlements of the Dutch and other foreigners upon the Delaware, which settlements had however never before been recognized or respected by the English government, was, much to the satisfaction of Mr. Penn, ordered to be immedi-

(*j*) 70 miles appears to have been the computation at the time this proposition was made.

ately executed—Lord Baltimore submitted, happy that he had been deprived of no more, since a writ of *quo warranto* had been issued against his charter—His contention however with Mr. Penn, relative to the extent of the two provinces did not cease here, but, on the contrary, rose into an irreconcileable difference of opinions and views, producing numerous instances of aggression, and of hostility, attended, in more than one case, with fatal consequences, and giving rise to a succession of proceedings so numerous that the slighest notice of them is more than could be conveniently added to this (already too long) digression from our main subject. I shall therefore not attempt it, but having shewn how the dispute arose, to wit, concerning the termination of the northerly line of Maryland, in which was necessarily involved the beginning of the long western line to the fountain heads of the Potomack, I shall as briefly as possible state the manner in which it was concluded.

It appears that much depended on a true delineation or map of the peninsula which was to be divided, and in particular a true location of Cape Henlopen, from which the cross line was to set out. To obtain these, commissioners had in the time of Charles lord Baltimore, grandson of the original disputant, been employed on the spot, by both parties, and when a map was prepared to the mutual satisfaction of these commissioners, it was sent to England and made the foundation of an *agreement* entered into and duly executed on the 10th of May 1732, for terminating all differences respecting the limits of the two provinces. By this instrument a circle was in the first place to be drawn about Newcastle, at the distance of twelve miles therefrom, agreeably to former stipulations, contained in the charter of Pennsylvania, and the feoffment from the duke of York, respecting that town: a due east and west line was then to be drawn across the peninsula from the eastermost part of (*k*) Cape Henlopen as laid down in the aforesaid map, to run from thence towards the Chesapeak, but to stop in the exact middle, and from thence, a straight line to be run up *northward*, till it should so touch the western part of the periphery of the aforesaid circle as to make a tangent thereto; which line was to be so run although it should not be, as near north and south as was supposed, and was, if necessary, to run above the peninsula, till it made the tangent aforesaid, and there to stop:—that from the north point or end of this line, determined by the said

(*k*) The cross line sets out from Fenwick's Island, a great distance below Cape Henlopen as laid down in Griffith's map of Maryland, but that place was then called Cape Cornelius, and Henlopen was held to be further down.

tangent, a line should begin and run *due north* above the peninsula, but so far only as until it came into the same latitude as fifteen English statute miles south of the most southerly part of the city of Philadelphia:—from the end of the due north line so determined was to begin a due east and west line, to cross the Susquehannah, and run to the utmost westerly extent of Pennsylvania, but for the present, and until the further clearing and settling of the country, to be run about twenty-five miles beyond the Susquehannah, by way of sufficiently marking the direction of the said line.—It was covenanted that the possession of the heads of rivers flowing into Chesapeak or Delaware Bays or into the sea should not give to the proprietary in whose territories they might be, while the lower part of such rivers should be within the limits of the other, "any sort of right or title to carry on any commerce into the "said Bays of Delaware or Chesapeak, or either of them "or into the sea through the lower parts of such rivers," &c. without licence first obtained from the proprietary through whose territory the lower parts or mouths of the said rivers should run.—In relation to the interests of grantees or occupants of the lands which had been in dispute, it was provided that each of the proprietaries might, at his own cost, take copies of all patents, leases, or other titles, granted by the other prior to the 15th of May (*l*) 1724—that those occupiers might upon paying the accustomed fees have new grants from the proprietary within whose province their lands might fall, provided that they should *attorn* and become tenants; submitting in all things to the new government, and paying, unless it should be dispensed with, all such rents and arrears of rent as would have been due to the former proprietary; on compliance with which conditions, they were to hold their lands, subject to the same fines, rents, quit rents, duties, services, and reservations, as the other landholders in the same province.—Persons, however, who had during the disputes taken double titles, sheltering themselves thereby by turns against each of the proprietaries, and those who had seated themselves without licence from either, were excepted from the benefit of these provisions, but were to be treated with moderation and regard, especially if they should have paid quit rents and services; and provided that, in the first mentioned case, they brought in and surrendered their former grants, and submitted to hold only of that proprietary within whose limits their lands should be found to

(*l*) It would appear that by some agreement, at this period, surveys and grants upon the disputed territory had ceased:—but besides any partial arrangements between the parties, there was a *temporary agreement*, in 1738 entered into by order of the crown, which would require particular notice if any thing was pretended here but a mere skeleton of the dispute.

lie; and it was provided that any further regulations which might be judged expedient in favour of those occupiers of the long disputed territory, should be settled by a subsequent agreement.

A time was limited for carrying this agreement into execution. Commissioners, agreeably to one of its articles, were appointed to run the divisional lines, but through some objections made by those of Lord Baltimore to the principles on which the others desired to conduct the work, it was not completed, and the agreement fell through. Lord Baltimore now petitioned king George II. for a new grant confirming to him the lands on the Delaware as a part of his province notwithstanding the words (*m*) HACTENUS INCULTA in the original charter. The Penns (sons of William Penn, who was deceased,) opposed him by a counter petition:—By an order passed in 1735 the consideration of the petitions was adjourned, in order that the Penns might have an opportunity to proceed in a court of equity for relief upon the agreement of 1732. Upon this suggestion they exhibited their bill in chancery, praying to be quieted in the possession of the three lower counties, and that the agreement just mentioned might be decreed to be in force. After the delays incident to proceedings of such consequence, the lord chancellor Hardwick decreed, in 1750, that the aforesaid agreement should be carried into effect, with a saving of all rights which the parties to that agreement had not at the time of making it a right to conclude. Commissioners for this purpose were to be appointed on both sides within three months from the date of the decree, and two years were assigned for the complete execution of the agreement: the questions raised on the part of Lord Baltimore in the course of the suit were also decided:—One of these was whether the circle about Newcastle should be of a *radius* or only a *periphery* of twelve miles; another, where should be the centre of this circle, and a third concerned the exact situation of Cape Henlopen. The chancellor's decision was that the circle should be of a radius of twelve miles, and its centre the middle of the town of New Castle. Cape Henlopen he declared to be where it was laid down in the original articles of agreement.

Commissioners were appointed under this decree and the work begun, but new difficulties are stated to have been made by those of Maryland; to remove which the Penns had recourse to the lord chancellor under a reservation contained

(*m*) "Hitherto uncultivated"—These two unlucky words furnished the whole ground of the proceding which has been stated in respect to the Delaware settlement; for the words "*partly occupied by savages*" would not have been sufficient, since that was certainly the fact, as well upon the Delaware as elsewhere, notwithstanding the alledged settlements of Dutch, Danes and Swedes in that quarter.

in his decree, and obtained in 1751, an order that the circle round Newcastle should, in regard to its distance from the town, be computed by horizontal and not by superficial measure, and that the fifteen miles south of Philadelphia should be measured in the same manner. In the same year Charles lord Baltimore died, leaving his son Frederick, a minor, and, through circumstances not material to trace, the final adjustment of these disputes was put off until the year 1760, when an an instrument of agreement bearing date the 4th of July in that year and reciting at large the agreement of 1732, and the decree in chancery, and grounded expressly upon these, was executed by Frederick lord Baltimore and by Thomas and Richard Penn, Esq'rs. the surviving sons and representatives of the founder of Pennsylvania; in pursuance of which commissioners were again appointed by the two parties, who commenced their operations in the same year, and the commission on each side being continued by new appointments, as occasion required, on the 9th of November 1768, they agreed to, and mutually signed, a report of their proceedings, and a map or plan of their surveys of the part of a circle round Newcastle, and the divisional lines; the last due west line having been actually run two hundred and thirty miles, and marked by mile stones one hundred and thirty two miles from the place of beginning. This agreement embraced and confirmed, agreeably to the lord chancellor's decree, all the articles of that of 1732, and in this way the (*n*) disputes between Maryland and Pennsylvania were finally terminated. Some further questions remained however concerning the *western* bounda-

(*n*) There are some circumstances in the contest with Pennsylvania which have been passed over in this recital, as belonging in some degree to the article of conditions of plantation. These are the extraordinary measures taken on the part of Maryland to settle and maintain possession of the district at the head of the bay, then called New Ireland, granted by patent to colonel George Talbot, and in particular the lands about Christiana Bridge, at which spot a fort was built and garrisoned with a small company or guard of men engaged for the purpose. This proceeding commenced by a set of instructions to Talbot dated the 12th of March, 1683, which was followed by several commissions to that gentleman, appointing him deputy of the north and north east confines of the province, authorising him to dispose of lands in that quarter; to lease any parts of the proprietary's two manors there upon particular terms therein specified, &c. The execution of these extensive powers was soon interrupted by the unfortunate incident already noticed of his murdering Mr. Rously the collector by stabbing him, it is not known upon what provocation, on board a vessel in Patuxent river. The proceedings in 1685, respecting the Delaware settlement put a stop also to lord Baltimore's pretensions upon Newcastle and the adjacent territory. As for colonel Talbot, he was conveyed for trial to Virginia, from whence he made his escape and after being retaken, and, I believe, tried and convicted, was finally pardoned by King James II. The various conditions and provisions concerning the settlement of the disputed lands, as they illustrate no general system are not thought to require notice further than what they receive incidentally among the conditions of plantation.

ry of Maryland, but these were with Virginia, with lord Fairfax, who had obtained a grant within that province, and in some measure with the crown itself. The main point in dispute was whether the north or the south branch of the Potomac was to be deemed the fountain head of that river intended in the charter of Maryland. This province of course contended for the southern branch; and the officers of the proprietary government were, to the last moment of its existence, sanguine in the expectation that it would be so settled whenever a favourable opportunity should arrive of bringing the dispute before the king in council. Lord Baltimore, however, was restrained by some orders of a general nature issued by by the crown relative to the back country, from settling the territory in question, and although, towards the end of the proprietary government, some of those lands were occupied under Maryland grants, the pretensions of the province in respect to its western limits were not vigourously asserted, and were left, so far as I can obtain information, unsettled at the declaration of American Independence, in which state they still continue, notwithstanding that many efforts have been made by the present government of Maryland to obtain a fair determination of the dispute. But this is not a subject to be discussed at present, and I shall, therefore, close this slight notice of territorial disputes by observing that the affair with Virginia remains hitherto upon a footing the most favourable to that state, the longitudinal dividing line being drawn from the meridian of the head or source of the *north* branch of the Potomac, so that we may gain, but cannot lose, by an investigation of our claim.

CHAPTER IX.

OF ESCHEAT WARRANTS.

THE general principle of escheats recognized in the English jurisprudence has been stated from authority in the conclusion of our remarks upon tenures, and it would serve no useful purpose to attempt a fuller developement of the doctrine, as it is not certain that the law of escheat prevailing in that country was strictly pursued in Maryland. There was, it is true, no other known law regulating that article, nor could there, agreeably to the charter have been a law or doctrine of escheat confessedly repugnant to that of England:

but, besides some particular evidences of a loose and arbitrary practice in this matter, the enormous number of escheats found on the proprietary records naturally suggests the conclusion that it was at least a very easy matter for lands in Maryland to fall within that predicament. The mode of proceeding, nevertheless, in respect to land alledged to be escheat, had generally speaking, an appearance of fairness and caution. A person conceiving a tract or parcel of land to be escheatable for want of heirs or in any other way stated his discovery by petition to the proper tribunal in land affairs, praying that a *mandamus* might issue for the summoning a jury to ascertain and declare on oath whether the land was escheat or not, and if so by what means. An order generally passed, on such an application, for a mandamus to issue from the chancery court of records to the sheriff of the county in which the land was suggested to lie, commanding him to summon and swear a jury of the neighbourhood for the purpose stated in the petition, and to make return to the same court of their inquisition and verdict. If the provincial court, upon view of this inquisition and a motion for that purpose, adjudged the land to be escheat, the petitioner then applied for a warrant to resurvey it for his own benefit, payment therefore to be made at such price as should be required upon the return of the certificate. The warrant was generally granted to that person in preference to any later applicant, although a positive right of pre-emption was not at all periods given to *discoverers* under the proprietary government. The warrant commonly embraced the privileges of other warrants of resurvey in respect to the correction of errors in the original surveys, and the taking in adjoining vacancy, but was not so frequently renewed or transferred; for the applicants, after the trouble and expence of the preceeding process, were not apt to delay what remained to complete their acquisitions, and as to transfers, as the pre-emption was in many instances granted as a special favour, it was not certain that an assignee would obtain a patent, or at least get the land upon equally favourable terms; for these remained, almost always, undetermined until the return of the certificates, although they were then mostly regulated by the conditions of plantation, so far as concerned the estimation of the land apart from its improvements: but besides the improvements on the just quantity of the original tract, there might be surplus land, also improved, and vacancy added, all which would form distinct objects of calculation, and therefore the proprietary's officers could very easily disappoint the assignee of an escheat warrant by imposing unreasonable terms of purchase.

To return to the previous inquisition just spoken of, although a sworn jury, in making it, must necessarily have had in their view some law or rule governing escheats, in order to determine whether the land under their examination was escheatable or not, it cannot be supposed that they considered in a critical manner the application of the feudal or the common law doctrines on that subject to the particular case in hand. The term escheat had originally a pretty broad signification, as it comprehended all acquisitions of land by means of any kind of chance or accident. In England its import was restricted and bounded by the legal descriptions of other methods of acquiring title *by purchase*, and it is stated by Blackstone to denote "an obstruction of the course of descent and a consequent determination of the tenure by some "unforeseen contingency." This obstruction and consequent determination of the tenure might arise in two, and but in two, general ways; to wit, by the tenants dying without heirs, and by the *attainder* of his blood. In Maryland the term escheat seems occasionally to have embraced all methods in which lands might result back to the lord of the fee either through want of other legal owners; through forfeiture by treason or suicide, or by means of failure in the performance of conditions relative to rent, &c. It would seem that the proprietary gave his own interpretation to this ancient term, and that he was countenanced in it by the juries and courts. There were so many ways for lands to *fall back* or *escheat* to the proprietary, that there was little danger of a failure whenever the government thought a case worthy of enquiry. Besides the several proclamations subjecting lands to forfeiture for non-compliance with the conditions of plantation, there were acts of assembly denouncing the same consequence upon the *desertion of lands* by not seating, inhabiting, and paying rent for them agreeably to the terms of purchase. If land was not found escheat in one way it was in another, and the court, in rendering a judgment upon an inquisition returned, or OFFICE FOUND, merely affirmed the validity of the particular cause of escheat or forfeiture under which the jury had deemed the case to fall; but supposing the want of heirs to be, as it certainly was, the most general cause of escheat, the rules in that particular appear to have been very favourable to the proprietary.—What they were can be judged only by inference from particular cases, for no precise instructions from the proprietary on that subject are to be found on record, and the laws of the province are silent about it. To judge summarily of the matter, I should suppose that if a man died without leaving heirs of the whole blood in the direct descending line his lands were held liable to escheat.—Instances occur of a father's praying for the preemptio of

the land of his deceased son, deemed to be escheat—a husband's soliciting the same privilege in respect to the lands of his wife who had died without issue, &c. The cases of all kinds in which lands were escheated under the proprietary government are, as I have said, exceedingly numerous, and yet I find it stated in an English law authority that escheat seldom happens to the *lord* for want of an heir to an estate. It is reasonable therefore to conclude that the law and rules of escheat rested very much upon the constructions and pleasure of the proprietary. The applications, orders, warrants, and other matters relating to escheats formed a great part of the business of the land office, although towards the latter period of the proprietary government the intervention of *proclamation* warrants superceded in some degree those of escheat, in affecting by a distinct kind of claim and process such lands as reverted back to the proprietary through non-performance of conditions. Escheat warrants continued however to be granted for property falling back for want of heirs—but the process of inquisition and regular condemnation previous to the sale or survey, was interrupted by the total change in the affairs of the land office occasioned by the suspension of the proprietary government in 1689. The disposal of escheat land was a matter which the king's governor and council could not assume without trespassing upon lord Baltimore's rights of property which, notwithstanding the severe proceedings against him in other respects, it had been thought proper not to invade. This was a trust confided to the proprietary's chief agent and other confidential officers, left in Maryland to attend to his interests, and who with considerable success opposed their personal weight and superiour abilities to the inveterate warfare that was carried on by the new administration against the remaining rights and influence of the absent proprietary; for though king William was content with depriving that nobleman of the powers of government, his officers in Maryland were willing to go much further, and were at length only restrained by positive injunctions from their sovereign to allow the proprietary's agents all proper means and facilities for collecting his rents and managing his concerns in the province. In the course of these ferments the chief agent appears to have claimed and sold lands as escheat without any condemnation or preparatory form, probably knowing that favourable decisions were not to be expected under the newly established order of things, and although he was called upon by the government to shew by what authority he sold lands as escheat *without an office found*, I do not perceive that the practice was ever fully resumed, and long before the period of our revolution it was wholly abandoned so that all that a person had to do who supposed land to be escheatable for want

of heirs (for cases of forfeiture had, as has been observed, gone into another channel) was to venture the expence of a warrant and survey, and afterwards if he thought proper, of the price, or, when regulations for that purpose had been prescribed, two thirds of the price, set upon the land; and his risk was considerable, for I perceive in none of the proprietary's acts any guarantee to the purchasers, or any provision for refunding, in case the title by escheat should not be maintainable, although intances occur of relief in particular cases of that sort, by warrants for an equal quantity of land or by a return of the purchase money. How it happened that the principles of the English law, which do not permit an entry upon land as escheat without a previous writ and regular process of condemnation, were disregarded in Maryland, even after the particular circumstances which first occasioned the omission of those forms had ceased, I cannot pretend to judge; but in that state the business was found at the termination of the proprietary government, and in the same way it has been continued, with the exception, which applies to the business of the land office generally, that it is now regulated by law, and with some important differences in the principle, or rule of escheat, and the assurance of title to the purchasers, which will be noticed when we come to the actual practice in land affairs. In the mean time the reader will find subjoined to this general account such documents, passages and examples as have appeared best calculated to illustrate the subject.

" *Extract from the proprietary's instructions to William Talbot, Esq. secretary—dated the 8th of September* 1670.

" Art. 3. That you take care to enquire after escheats of land and hereditaments escheated or forfeited to his lordship by any ways or means whatsoever, and the same to cause to be so entered upon record there, that all such patents of forfeited lands may evidently appear and be known at first sight to be escheated or forfeited, by prefixing some short memorandum or note thereof over the head or margent of the said patents upon record as aforesaid.

4. That you also cause the said escheated lands as aforesaid to be entered in another place of the records together by themselves in due order, mentioning the names of those lands, the quantity of acres they contain, together with their bounds and the county and place where they lie and the time of their escheat and forfeitures.

" 5. That you cause the same to be likewise entered in every respective county court where such escheat lands shall happen to be siezed into his lordship's hands, and that you cause from time to time notice to be given to his lordship's sur-

veyor general and his deputies of such escheated and forfeited lands, to the end no survey of any other said lands may be made by any of them for any other persons, and that you permit no grants from his lordship of such lands to pass your office with particular warrants or instructions given or to be given by his lordship to that purpose, under his lordship's hand and seal at arms, entered or to be entered upon record in your office there, and that you send his lordship a rue copy of the record attested under your hand of such lands as are already and shall here after be from time to time escheated or forfeited to his lordship."

COUNCIL BOOK, C. B. fol. 50.

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"MARYLAND, *ss.*

"*By his excellency the Captain General.*

"Forasmuch as the right hon'ble the lord propietary hath commanded me to return unto him an exact account of all such lands as are escheated unto his lordship, by any ways or means whatsoever within this province, and being desirous nothing more than exactly to comply with and perform his lordship's command in every particular, I do therefore hereby order and command you that you make a true and fair list of all such lands as are escheated to his lordship within your county, and in the same signify not only the quantity of any tract of land that is escheated to his lordship within your county, but also whether it be rich, indifferent, or barren land, and whether any of it be cleared, and how much, and if seated, then what improvements are made thereon as to orchards, fencing, and housing, and so of every particular tract of land escheated within your county to his lordship as aforesaid; and the said list fairly engrossed and attested under your hand that you return unto me at the city of St. Mary's the tenth day of May next and for the more fully empowering and enabling you to perform his lordship's commands herein, I do hereby require the clerk of the court of your county to be aiding and assisting to you in the premises. Of this you are not to fail. Given under my hand and seal at arms the 11th day of November, in the 42d year of the dominion of his said lordship over Maryland, &c. Annoq. Domini 1673."

"*To Mr. John Allen, high sheriff of Calvert county.*"

(The like sent into every particular county.")

COUNCIL BOOK, C. B. fol. 116.

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"*At a council held the 27th of February* 1683.

"Ordered that all inquisitions returned upon writs of mandamus issued forth of the chancery court of records by

order of this board, be by the honourable the secretaries (after reading in the provincial court) returned unto this board for their perusal and further order therein."

COUNCIL BOOK for lands, C. B. No. 1, fol. 25.

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In instructions to the governor dated the 14th of December 1673, the proprietary, after stating that he had received from the surveyor general a list of certain lands escheated to him with an estimate of their respective values according to a return made by the deputy surveyor of Talbot county, and after directing that so much of them may be sold in the first place as will raise clear of all charges two hundred pounds sterling to be remitted in bills of exchange to England for a particular purpose, proceeds as follows, viz.

" That after the said two hundred pounds sterling be raised as aforesaid out of the said escheated lands for his lordship's said sister, his lordship's said (*a*) sonne dispose of the residue of the said escheated lands for his lordship's best advantage either by lease for 21 years or for one or two or three lives, or for any number of years determinable upon one two or three lives, or by sale of the inheritance thereof to such as shall be willing to buy the same, provided that all royal mines be excepted in all such leases or sales, and that there be a yearly rent of 2s. sterling at least for every fifty acres of the said land reserved to be paid to his lordship and his heirs for ever."

LIBER R. R. fol. 22.

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" Ordered," (by the land council, 2d December 1687) " that no land now to be escheated to his lordship shall be " sold but for ready money."

LIBER C. B. No. 1, fol. 302.

—

" Came William Pearce high sheriff of Cecil county, and presented a list of several parcels of land escheatable to his lordship in Cecil county, viz.

" *An account of what lands is forfeitt in Cecil county.*

" Thomas Aldridge held 100 acres but hath been dead these nine or ten years, and no heire known, nor rent paid.

" Philip Burgen holds 200 arces by marriage of the relict of Robert Saunders—the said Saunders and his wife being both dead and left no issue.

" Thomas Lindsey holds 200 acres by marriage of the relict of Robert Morrice, the said Morrice and his wife being both dead and left no issue nor any heir known.

" Thomas Wright, late of St. Maries county held 200 acres of land who as I am informed is since dead and left no heire.

(*a*) The orthography of that day.

" Simon Soper holds 200 acres of land taken up by Abraham Bondwell, the said Bondwell, and his wife being both dead and no heir known.

" Thomas Weymouth held 150 acres of land who is dead and no heire known.

" Thomas Salmon held 150 acres of land, who is dead and left a son in the tuition of James Stavely, the said Stavely, and the orphan of Salmon being both dead and no heires known.

" One Cornelius held one hundred acres of land, who is dead without issue.

" Per me WILLIAM PEARCE."

" August 16, 1685."

" Order for mandamus to Edward Inglish and George Wardner of Cecil county to make inquisition by a jury, to be by the sheriff of the said county empannelled and sworn whether the said land do escheat, and by what means, and to make return of the whole proceeding into the chancery court of records with all convenient speed.

Note, This order was afterwards annulled by a precept in the nature of a supercedeas and mandamus issued anew.

LIBER C. B. No. 1, fol. 149.

" *At a council held at St. Peter's the 9th day of February* 1679.

" To the right honourable the lord proprietary, &c.

" The humble petition of Anthony Worteman of Kent county, Sheweth—That one Pasco Dunn, late of the island of Kent was by patent under the great seal of this province, bearing date the 2d day of September 1664, granted by the late lord proprietary of noble memory, deceased, lawfully seized of a tract of land for one hundred and fifty acres called Pascoe's Adventure, lying on the Isle of Kent, as appeareth upon record, who sold the same to Edward Sparkes, of the county aforesaid, deceased; and the said Edward dying without heire, the land is liable to be escheated to your lordship. Your petitioner doth humbly pray that your lordship will grant a mandamus to enquire by the oaths of twelve honest and lawful men, for that purpose to be empannelled and sworne, what lands or tenements Edward Sparkes dyed seized of, that your lordship may by record be entitled thereunto.

" And then your petitioner most humbly prayes the premises being considered, that your lordship will graciously please to admit your petitioner to purchase upon reasonable tearmes from your lordship, the 150 acres as is before mentioned.

" And your petitioner shall pray, &c."

" Underneath the petition was writt, (viz.)

" Lett mandamus issue forth according to the request of the petitioner."

LIBER C. B.—lands, fol. 1.

" February 9th, 1679.

" Ordered, that mandamus issue to the sheriff of Kent county, commanding him by the oathes of twelve honest and lawful men of the neighbourhood, to enquire into what lands and tenements Edward Sparkes dyed seized of, and to make returne thereof into the chancery court of records with all convenient speed.

" Signed, per order (of the lord prop'ry and council)
J. L. clk. consil."

To the honb'le Willm. Calvert, Esqr. principal secretary of Maryland, or his chief clk.—These"

LIBER C. B. lands, fol. 3.

" *To the right honourable the lord proprietary, &c.*

" The humble petition of Peter Burges, of Calvert county, sheweth, That whereas Valentine Huddlestone late of Calvert county, had granted to him under the great seale of this province, bearing date the 30th day of August, 1667, a parcel of land called Lambeth, lying in Calvert county, containing one hundred forty and three acres as appears upon record, and for that your petitioner is informed that the said parcel of land is escheatable to your lordship *either for want of heyre of the said Huddlestone or for non-payment of the annual rent* for the same.

" Your petitioner humbly prays your lordship's writ of mandamus to Mr. Roger Brooke and John Craycroft to enquire of and in the premises, and if it shall appeare that the same be escheated to your lordship, that your petitioner may have the preemption thereof."

" Whereupon mandamus is granted and an order to the secretary directed for that purpose, viz.

" *February* 14, 1679.—*By the lord proprietary and council.*

" Ordered, that mandamus issue forth of the chancery court of records to Roger Brooke and John Craycroft of Calvert county, gentlemen, to enquire into the lands of Valentine Huddlestone late of the same county, and to return their proceedings under their hands and seales into our said court of chancery with all expedition. Signed per order,
" J. L. Clk. Council."

" *To the hon'ble Wm. Calvert, Esq. secretary, or to his chiefe clerk—These.*"

LIBER C. B. No. 1. fol. 6.

"*Charles County, August* X*th*, MDCLXIX.

"This inquisition taken before us Henry Adams and Francis Pope, by virtue of a writ to us directed from the lord proprietary of the province of Maryland to enquire of what lands and tenements Samuel Smith, late of Charles county, deceased, dyed possessed of, held of the lord proprietary as well in desesne as in service, and what day he dyed, and what value the lands were of by the year, and who was his next heir.

"In obedience to which writt we have made this following inquisition by the oathes of these twelve subscribed honest men of Charles county. and under our seals and the seals of every of them we do return it.—First we find that Samuel Smith late of Charles county, deceased, dyed possest of four hundred acres of land lying in Charles county, called Cold Spring, which land hath been in the constant tenure and occupation of Robert Downes, and that the said land is worth eight shillings per annum. Likewise, that Mr. Robert Slye was constantly by the said Smith called *couzen*, and was commonly reputed his next heir; if he was not we can find no other. And likewise we do find upon our inquisition that the said Smith dyed the fifth or sixth day of March, one thousand six hundred sixty one. To the testimony of the truth of our inquisition we have respectively set our seals the day and year abovesaid.

HENRY ADAMS.
FRANCIS POPE.

THOMAS BAKER,	ROBERT CLARK,	*All Sealed.*
JOHN CHESWIN,	JACOB PETERSON,	
ALEXANDER SIMPSON,	JOHN LEE,	
ALEXANDER WHITE,	EDMUND LINDSEY,	
JOHN STONE,	WILLIAM ALLEN,	
JOHN MACKEY,	ROBERT DOUNES,	

LIBER No. 12. fol. 319.

Vera Copia. ROBERT CARVILE, Reg'r."

—

"*October the* 8*th*, 1681.

"One parcel of land called Wignall's rest, being at the head of Gunpowder river, in Baltemore, containing two hundred acres, surveyed for William Wignall, late of Baltimore county, deceased, *was escheated* unto his lordship the lord proprietary of this province of Maryland, for want of heyre of the said William Wignall. Rent, 4*s*. per annum; valued by the Jury to be worth by the year in all issues the summe of two shillings sterling per annum.

WM. COCKS, Clk."

Together with the above certificate from the clerk of the provincial court was produced the following order, and desired to be entered by Richard Brenton, viz.

" JACK LLEWELLIN,

" Lett patent issue to Richard Brenton for the two hundred acres called Wignall's Rest, on Gunpowder River, he having made good the summe of three thousand pounds of tobacco (being the consideration for the same) to

Your Friend,

C. BALTIMORE."

" 29*ht* X*br*. 1682.—*To Mr. John Lewellin.*"

LIBER, W. C. No. 4, fol. 294.

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" Randolph Brandt, of Charles County, presents a petition, stating that he had theretofore prayed and obtained a writ of mandamus for an inquisition concerning a tract of one hundred and fifty acres of land, formerly in the possession of George Rapier, deceased, upon the return of which inquisition the said land was *adjudged and condemned escheated* to his lordship for want of heir of the said George Rapier; and that upon his further application he obtained an order from his lordship for a grant of the said land for a consideration *truly* paid: but that upon stricter search in the land office he finds that the said Rapier had laid out for him the 28th of May, 1653, and returned a certificate of a parcel of land in the said county for two hundred acres; that Richard Lloyd, who married the widow of Rapier, sold the same to David Philips, also deceased: so that the aforesaid inquisition, and the judgement of the provincial court are erroneous, the said Rapier having at his decease no land which could escheat to his lordship, the right and title thereof being vested and settled in the said David Philips. He therefore prays, that *the mandamus, inquisition, and judgement aforesaid may be vacated*, and that a new writ of mandamus may issue directing an enquiry concerning the said land as the property of Philips, which is granted.

The said Brandt on the next *council day* held on the 2nd of May, 1681, by another petition sets forth, that having advised with his counsel, he conceives the right to the said tract to be alltogether in his lordship *without any escheat*, the conditions of plantation in respect to the taking out grants within one year not having been complied with, and the land never patented, so that neither Rapier or Philips had at their deaths just claim thereto. He therefore prays an immediate order to the register of the land office, that patent may issue to him according to the certificate formerly returned by Rapier, and without any regard to the preceding orders of the board respecting the said lands. To which the following answer is made.

" His Lordship desires first to be legally vested and entit-
" led of and in to the land mentioned in the petition before

" he can pass any grant thereof, and therefore the former or-
" der of this board for mandamus to issue to enquire into the
" lands of David Philips, is hereby confirmed."

—

" 5th May 1684.

" When the land that sir John Oldcastle formerly held shall be adjudged mine, I order colonel William Digges may have a pattent for the same as the gift of

C. BALTIMORE."

" *To the sec'rys for the time being.*"

LIBER C. B. lands, fol. 154, &c.

—

" Judeth Price, by her petition sets forth that her husband Roger Price being possessed of three tracts of land in Talbot county, amounting to four hundred and fifty acres, was unfortunately drowned—She prays that the said lands may be *continued* to her and her heirs.

" Order for mandamus to enquire whether the lands do escheat to his lordship; the petition to be further considered upon return of the inquisition."

LIBER C. B. No. 1, fol. 27.

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" A like petition from the widow of William Cocks, late clerk of the provincial court, representing that the said Cocks died (intestate) seized of a certain parcel of land and left no heirs within the province—a mandamus ordered, and upon return of inquisition his lordship promises, if the land be found escheat, that it shall be granted to the petitioner."

LIBER C. B. No. 1, fol. 29.

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" The petition of John Earle of Talbot county, sets forth that he married the daughter and sole heiress of John Burges of the said county, who dying left to his said daughter a certain parcel of land, which by her death, afterwards without issue, the petitioner supposes to be escheat—He therefore craves a mandamus, &c. and preemption of the said land. Mandamus ordered accordingly, and the petitioner (on condemnation) to have " the refusal" of the said land, " upon such reasonable terms as to the board shall seem meet."

LIBER C. B. No. 1, fol. 144.

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" It is represented afterwards in a petition of Thomas Skillington, in reference to the same land, that William Turner had in the year 1659, obtained a grant of four hundred acres, which he bequeathed by will to his sons Richard and Edward Turner—to be equally divided between them, but the said Richard to have his *choice* upon the partition. That

Richard before any partition assigned and transferred his moiety to the petitioner Skillington, who hearing of the mandamus granted to Earle, desires that there may be no sale to the said Earle, until he may have a hearing and order be taken for a division of the land and for his having his choice of the two parts.

A third party also appears, to wit, Amy Bishop, late relict of William Eagle, deceased, and, prior to that, widow and relict of the beforementioned John Burges, who claimed an interest in the said land and craved the "*first refusal*" of it as being escheat for want of heirs of the said Burges.

The decision and order of the council upon the whole case was that the four hundred acres granted to William Turner should be divided by four persons, named for that purpose, between Skillington and Earle; the former to have his choice of the parts;—and that Earle upon paying six thousand pounds of tobacco, with all fees arising for the escheat of his moiety and satisfying Skillington for his charges incurred in procuring the escheat, should have a patent for the part of the land awarded to him saving to the petitioner Amy Bishop her thirds for life in the said part.

LIBER C. B. No. 1, fol. 180.

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The following extract shews the directions given to juries and the manner of their reporting the facts found by them.

"To enquire what lands and tenements Thomas Petite, "late of the said county, deceased, died seized of at the "time of his death as of fee in the county aforesaid, and of "what manor and under what rents and services, and how "much those lands and tenements were of value by the year "in all issues, and at what time the said Thomes Petite died, "and who was his next heire, and what age the heire was, and "who those lands and tenements had or did occupy, and their "issues and profits had or did receive, and by what title and "how, in what manner, and who had paid the rent for the "same and to whome," &c.

Patent to Randolph Brant, LIBER N. S. No. 2, fol. 25.

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The jury in the same case found "That, Thomas Petite died seized in his demesne as of fee of the land in question, as by the patent thereof appeared, to be held of the manor of West Saint Mary's in free and common socage by fealty only for all services, under the yearly rent of nine shillings sterling or four bushels and a half of good corn;—that the said land was worth besides the rent due to him for the same, the sum of four hundred pounds of tobacco per annum; that

Thomas Petite died in the year 1650 or thereabouts and without heir, that the land was occupied by John Guy, who married the relict of the said Petite, about eleven years, and afterwards was occupied by Peter Carr, who also married the said relict, about ten or eleven years, and continued after her death to be held by the said Carr, by his lordship's special favour," &c.

CHAPTER X.

OF PROCLAMATION WARRANTS.

THIS kind of warrant is known by those who are conversant in land affairs to have taken its rise, and its name, from one or more proclamations issued under the proprietary government, by which persons who had made surveys comprehending vacant or escheat land, and who neglected to pay or compound therefor, and to take out their patents within a limited time, were subjected to the loss of all the rights derived from such surveys; the lands becoming by means of such omission liable to be taken by the first discoverer, under new warrants to be obtained for that purpose. The particular proclamation, however, on which those warrants were founded has hitherto been a matter of uncertainty as well as of frequent enquiry, and as the reciting or supplicatory part of them generally referred to "sundry proclamations," there was some reason to doubt whether the practice derived its origin from any one in particular. It has nevertheless been the most prevalent idea that those warrants were grounded on A PROCLAMATION not now to be found or ascertained. I have satisfied myself by an exact investigation how this matter really stands. The warrants in question, are in a collective sense, founded upon three successive proclamations, issued in the time of Charles lord Baltimore, the fourth proprietary, and remaining upon record in the land office; the first dated the 6th of November 1725, the second on the 13th August 1732, and the last (by the proprietary himself at Annapolis) on the 26th of June 1733. The earliest warrant on record containing in the body of it a direct reference to *a proclamation* as the ground of the thing aimed at, was granted to Benjamin Tasker, Esq. on the 4th of January 1730. This sets out with a full recital of the proclamation of November 6th, 1725 above mentioned: It is essentially a proclamation warrant, though not so called; for that de-

nomination was not used until the year 1751 : it is the original warrant of the kind, and the proclamation of 1725 is therefore the one to which, if it must be referred to a single proclamation, the origin of these warrants is to be ascribed.

But although this proclamation continued for some years to be referred to *alone* in all warrants for affecting forfeited surveys, and though the second proclamation does no more than to repeat and enforce the subject of the first, the tenor of this first one is not such as to make it a sufficient ground and authority for all the warrants of the kind that were subsequently issued ; for it embraces only those cases in which the surveys were made under special warrants (either original or of resurvey), and it was not until the proclamation of 1733 that surveys on common warrants were subjected to the operation of warrants such as those we are now describing ; this last mentioned proclamation is moreover in other respects so important a one, and is so distinguished in its circumstances, being made by the lord proprietary in person, after he had (*a*) suspended the issuing of warrants for six months, that it cannot be safely asserted that this proclamation was not as much in view as any other in the appellation which was afterwards given to these warrants, more especially as, prior to their receiving that name, it was in many instances referred to *alone* as that of 1725 had formerly been, in the reciting part of the warrants. In regard to the name finally obtained by these warrants, a few further remarks will remove all difficulty. Mr. Tasker, a gentleman of eminent note and influence in the provincial government, was the first person who took a warrant for affecting land already surveyed and which *by virtue of a proclamation* had become liable to be taken by a second survey to the benefit of the discoverer. If he did not draft the warrant itself, it was undoubtedly drawn from a (*b*) written application, in which he re-

(*a*) The proclamation refers to a suspension in the issue of warrants, and the records shew its duration to have been about six months ; renewal of warrants already out being in the mean time permitted. The measure was occasioned by the proprietary's intention to raise his rents, which he did by this proclamation. The instrument is therefore, properly of the description of conditions of plantation.

(*b*) Warrants naturally divide themselves into two parts, the first of which contains the motive or *reason* of their being demanded, and the object on which they are to operate ; and the other directs the execution of what is desired, under certain conditions and restrictions : for this last part of warrants there has generally been a set form, but under the former government the first part of all warrants involving resurveys was allowed to contain any special matter whatever that the parties thought proper to set forth, and which was previously stated in their petitions.— In a general way these petitions were prepared by the clerk, but it is easy to discover that persons such as Mr. Tasker commonly prepared their own applications, well knowing the importance in land office transactions of being full and correct at the outset.

ferred in the manner he thought most proper to the proclamation under which he claimed such second survey: his reference was a full recital of the proclamation of 1725: the warrant contained the same recital; but though it differed thus in its preamble from all former warrants, the land office was not prepared to give it a new denomination; for the directing part of the warrant had nothing unusual in its form, and as this was for 400 acres of land, liable for valid cause to be taken up as vacant land, (the former survey being annulled,) it was called in the office a "*special warrant of vacant cultivation*" for that quantity.—The next warrant on record referring to the same proclamation was granted to William Cumming on the 15th of March in the same year: The object was to affect land which had been surveyed under an escheat warrant, but not paid for, and the warrant to Cumming was, probably for that reason, called a warrant of escheat. Another, granted to Daniel Dulany, Esq. of the 4th of May 1732, on a suggestion that two persons had made surveys of 500 acres each but had not sued out grants, and had died without heirs, and without disposing of the lands, was, on the other hand, called "a special warrant of resurvey." These warrants continued, in this unsettled manner, to receive one or the other of the established designations, probably at the discretion of the clerk who prepared them, until the year 1751, when a warrant was issued on the 6th of May to James Jarad, which (*c*) in the alphabet is called "a special warrant *on the proclamation*," and from that time all warrants founded on certificates not compounded on were called by that name, or by the shorter appellation of *proclamation warrants*, which perhaps they had obtained in a common parlance before they were so distinguished in the office. The succeeding warrants of this kind were grounded on one or the other of the proclamations, according to the circumstances of the land meant to be affected; and as these instruments, were, as will presently be seen, not very clearly worded, the reference contained in the warrants was, for greater safety, or to avoid the trouble of distinction, to "sundry proclamations" instead of a single one.

To examine more particularly the nature of this warrant, which is the parent of one of the same name, but differing in some of its properties, now in use, it is to be observed that the proclamation of 1725 refers to preceding instructions to the judge of the land office, requiring that persons claiming right to land, upon certificates grounded on *special* warrants, shall pay the condition thereof within a limited

(*c*) It is only in the alphabets and in the titling books that the particular denominations of warrants are found, and the latter, for the period we are speaking of, are not in the office.

time, on pain of being thereafter debarred from obtaining their grants—The special warrants here intended comprehend as well all kinds of warrants of resurvey as those original ones which were distinguished from *common* warrants only by being issued with locations. The penalty of the proclamation operates in respect to all escheat land and improvements not paid for within two years from its date; to all vacant land (with its improvements) added to former tracts, escheat or otherwise, upon resurveys; and to vacant cultivation, taken up, under primitive warrants, which by any means should not have been paid for at the time of taking these warrants, nor within two years as aforesaid. In all these cases of omission, and, notwithstanding full payment, if grants should not be taken out, the rights grounded upon the former warrant became void, the warrant itself annulled, and the discoverer had a preemptive right to the land. The second proclamation does nothing more than to invite attention to the other, except that it is more express upon the article of preemption. Both of these instruments, however, are inaccurate and confused, in their design as well as in their language. In the first one we find the object of it to be "the "better establishing a more regular method of proceeding in "relation to escheat and special warrants in the land office." This evidently supposes a permanent regulation, to operate on escheat and special warrants thereafter to be issued as well as those already out, and yet by the letter of the proclamation future warrants and surveys were not within the scope of its operation. The same may be said of that of 1732 which speaks only of the forfeiture of those (incipient) rights which were then actually obtained; but a literal interpretation is what these instruments will not in any manner bear; for, the first, for example, requires a compliance with its directions within two years from the date, and the second enforces that compliance when it is five years too late for the purpose. The second Proclamation, moreover, dwells exclusively upon warrants of resurvey; whereas, by the recital which it makes of the former one, certificates returned under original special warrants are equally in contemplation, supposing them to contain land not paid for at the time of taking the warrants, or improvements thereon, if so paid for. These Proclamations must therefore not be construed too strictly; but, in conjunction with the instructions under which they were issued, and with the subsequent proclamation of 1733, must be understood to establish a rule, that persons not compounding on their surveys and taking out patents within two years from the date of the warrants should be subjected to the loss of their rights, in favour of the first discoverer; for the proclamation of 1725 was issued in obedience to express instructions from the

proprietary to Philemon Lloyd, judge of the land office, dated at London the 19th of September in the preceding year, in which was contained a direction, "that no special warrants should be thereafter granted except with the condition that the parties should take out their patents within two years from the date thereof," which condition was accordingly always after inserted, at least, in all warrants of escheat and resurvey. Although therefore the proclamation spoke only of warrants already taken, the condition inserted as aforesaid in latter warrants subjected them to forfeiture on non-compliance, and the proclamations having explained more at large the consequences of omitting to compound, and to sue out grants; and that of 1733 having taken in the case of common warrants, all subsequent failures or omissions fell under them either distinctly or in the aggregate, and they were accordingly referred to as the ground of every application for warrant to affect lands surveyed but not compounded on &c. by the description of "*sundry proclamations.*" I have been thus particular in deriving the origin and explaining the nature of the proclamation warrant not only to settle a question of considerable curiosity, but also because the singular name, given, in all probability, by mere chance, to this species of warrant, has since the revolution been introduced into the laws of the State, and recognised as the descriptive appellation of a warrant containing the general principle of the former one, thoug necessarily differing in the extent of its objects and operation: but although the present warrant does differ from the other in several important particulars, it is not a warrant of original ordination, but is, in fact, the proclamation warrant of the former government, adopted by the state, and as such continues subject to the rules, usages, and interpretations which prevailed under that government, so far as they are applicable to the present objects of the warrant, and are not superceded by positive rules since prescribed. I shall now insert the documents referred to, together with a proclamation of the 7th of February, 1744, which being a repetition, almost verbatim, of that of 1732, and being too late to have had a share in originating those warrants, although it served probably, in its turn, to keep them up, has not appeared to require notice in the preceding recital.

In the right hon'ble the lord Proprietary's additional instructions to Philemon Lloyd. Esq. his chief judge in land affairs, bearing date at London the 19th day of September, 1724, the eighth paragraph is as followeth:

"8. Whereas, I am fully convinced how reasonable it is that any person pretending right unto lands within my pro-

vince, upon special warrants, should pay the conditions thereof in a certain limited time and take out their grants;

My will therefore is, that a Proclamation be forthwith issued for taking out such grants within two years from the date of the said proclamation, upon pain of being refused grants after that time: and I will have no special warrants granted henceforward but under the same limitations of time for the taking out the grants thereof, or less if you think that expedient. C. B."

—

"MARYLAND, *ss.*

"*By the hon'ble Charles Calvert, Esq. Governour and Commander in Chief in and over the Province of Maryland*

"A PROCLAMATION.

"Whereas severall persons have applyd to his lordship's land office for speciall warrants to take up lands cultivated and improved, which according to the conditions of plantation could not be affected by common warrants, and others upon discovery of lands escheated to his lordship, have also taken out escheat warrants, which warrants have been generally obtained by persons pretending to have made discoverys of the said lands, to entitle them to the preemption thereof as a reward and encouragement for such discoverys, and haveing obtained such warrants, have either delayed the execution thereof, or only returned certificates of their surveys, wholly neglecting the paying his lordship any consideration for his lands for a considerable number of years; contrary to the true intent of granting such warrants, and have thereby hindred such as would gladly take up such lands and pay his lordship for the same.

"His lordship therefore, for the better establishing a more regular method of proceeding in relation to escheat and speciall warrants in his land office, and to prevent any person's being surprized by his instructions to Philemon Lloyd, Esq. his judge in land affairs, dated the 19th of November last, directed a proclamation to be imediately issued, intimating that all persons pretending right unto lands within this province upon certificates grounded upon speciall warrants, that they should pay the conditions thereof in a certain limited time and take out their grants thereon, on pain of being refused such grants on failure thereof.

"These are therefore in his lordship's name to publish and make known unto all persons obtaining speciall warrants for lands escheatable, surplus lands, or lands otherways reserved by conditions of plantations, that if they do not within two years next after the date hereof come and pay and satisfie unto his lordship, his agents, or other persons by him appointed

to receive the same, such price as has already been or shall thereafter be agreed upon for all such escheat or forfeited lands, and shall pay the composition money for surplussage and make good rights for all vacant lands that shall be added to former surveys, and also pay for the improvements made thereon, according to the nature and import of the sundry warrants and certificates of survey grounded on the same, and likewise shall sue out grants thereon within the time limited as aforesaid ; that then his lordship hereby declares that he will recall his former acts of favour as to the land warrants granted as aforesaid and the certificates of resurvey made thereon ; and doth hereby subject such land to the benefit of the next discoverer, as if no such resurvey had been made, and all warrants whereon the certificates of such resurveys were grounded, are hereby declared to be null and void as if the said warrants had never been granted : Whereof his lordship's agent and secretary and all others concerned are charged to take particular notice. Given at Annapolis, under his lordship's greater seale at armes, this sixth day of November, in the tenth year of his lordship's dominion, &c. Anno Domi. 1725.

(L.S.) CHA : CALVERT."

LIBER, C. C. Folio 423.

" MARYLAND, *ss.*

" *By his excellency Samuel Ogle, Esquire, lieutenant governor and commander in chief in and over the province of Maryland,*

" A PROCLAMATION.

" Whereas proclamation hath been heretofore published within this province, making known unto all persons who had at any time obtained speciall warrants of any kind whatsoever and returned certificates thereof into the land office, That unless within two years next after the date of such proclamation, they did pay and satisfy unto his lordship or to his agent, or other officer by him appointed to receive the same, such price as should be agreed upon for escheat, or otherwise forfeited lands ; for vacant cultivated lands and the improvements made thereupon, and make good rights to contiguous vacancys, added under former surveys, according to the import and true design of such speciall warrants, and do likewise sue out grants thereon within the time limited as aforesaid ; that then, and in all cases of neglect either in paying the purchase money or making good rights as aforesaid, his lordship did thereby recall, revoke and make null his former acts of favour in the granting of such speciall warrants, de-

claring all lands so resurveyed and not paid for as aforesaid, to be again subjected to the preemption of the next discoverer: which said proclamation hath been hitherto little regarded by the people of this province.

" Wherefore, for the better enforcing the same, and for removeing any pretence of surprize upon any of his lordship's tenants; these are in his said lordship's name to publish and make known unto all persons whatsoever having or pretending any right to lands by certificate of resurvey returned and lodged in his lordship's land office, upon escheat warrants, upon warrants for vacant cultivations, or upon speciall warrants for adding contiguous vacancy as aforesaid; that if they do not apply to the agent, and make purchase of his lordship's right to such land as aforesaid, and sue out grants thereon according to the design and purport of the above recited proclamation, then and in all such cases the several tracts of land so resurveyed, and now lying upon certificate returned and lodged in his lordship's land office are subjected as by the former proclamation to the first discoverer of such deficiency or failure in the payment of the purchase money or neglect in making good rights to the same; which discoverer for his greater encouragement will be allowed the preemption of the land, so by him discovered to have been held and claimed by any person or persons whatsoever without paying the purchase money, or making good rights to vacancies as aforesaid. Wherefore we charge his lordship's agent and secretary and all others concerned to take particular notice. Given at Annapolis, this 13th day of August, 1732.

SAMUEL OGLE."

—

" MARYLAND, *ss.*

" *By the right honourable the lord proprietary,*

" A PROCLAMATION.

" BALTIMORE.

" Whereas we thought fit to desist for some time past from granting any new warrant out of our land office, and as we are now again pleased to give our tenants liberty of entitling themselves to lands in this our province, we hereby publish and declare the further terms, conditions and reservations upon which any grant or patent shall pass from us for such lands, to witt: That the annual rent of ten shillings sterling shall be reserved and payable to us by every such patent for every hundred acres of land to be granted in such patent, on any warrant not issued before the date hereof; unless our chancellor and judge of our land affairs shall determine and direct a

less rent for any distant lands on the borders and frontiers of this our province. Further, we out of our great condescention hereby publish and declare, that the rent of four shillings sterling only as usual for every hundred acres of surplusage land hereafter to be granted, shall be reserved and payable to us; and as it is not reasonable or just that any lands granted by us should be held by any person who may neglect to pay our rent reserved, therefore we think fit, and accordingly do declare that the terms of all grants or patents on future original, common or special warrants shall be to be held on payment of the rent reserved, or otherwise such grant or patent to be void. And also for the encouragement of such who may be able and willing to discover lands or houses escheatable, we do declare and order that any discoverer thereof shall be entitled to one third part or worth of the value which shall be set on such lands and houses, to be allowed in the composition or purchase money which such discoverer ought to pay for the same; and which discoverer our will and pleasure is shall have without exception the preference or preemption, and whereas we are sensible of the mischiefs and inconveniences arising not only to ourself but our tenants, by the continuing common warrants or caveats in force for a very long time, therefore we hereby direct that all patents for lands on any common warrant now issued, or on certificates now returned, shall be obtained before, and not after the fourteenth of June which shall be in the year 1734, and within one year after the determination of any caveat; and that all patents for lands on any common warrants to be issued after the date hereof, shall be obtained within and not after two years from the date of such warrants, and no caveat shall be renewed after the expiration of six months; and our will and pleasure is, that there shall be reserved in all patents on future warrants, one tenth part of all mines (other than royal mines totally excepted) by such grants to be delivered to our receivers at the pitt's mouth, or at the place of raising the same. Given at Annapolis this twentieth day of June, in the nineteenth year of our dominion, &c. Annoque Domini, 1733.

JOHN ROSS, Cl. Council."

LIBER E. E. fol. 484.

"MARYLAND, *ss.*

"*By his Excellency Thomas Bladen, Esq. Governor and Commander in Chief in and over the Province of Maryland*

"A PROCLAMATION.

"Whereas proclamations have been heretofere published within this province, making known unto all persons who had

at any time obtained special warrants of any kind whatsoever and returned certificates thereof into the land office, that unless within two years next after the date of such proclamation, they did pay and satisfy unto his lordship, or to his agent or other officer by him appointed to receive the same, such price as should be agreed upon for escheat, or otherwise forfeited lands; for vacant cultivated lands and the improvements made thereupon, and make good rights to contiguous vacancys added under former surveys according to the import and true design of such special warrants, and do likewise sue out grants thereon within the time limited as aforesaid, that then and in all cases of neglect either in paying the purchase money or making good rights as aforesaid, his lordship did thereby recall, revoke and make null his former acts of favour in the granting of such special warrants, declaring all lands so resurveyed and not paid for as aforesaid, to be again subjected to the preemption of the next discoverer, which said proclamations have been hitherto little regarded by the people of this province.

Wherefore for the better enforcing the same and for removing any pretence of surprize upon any of his lordship's tenants; These are in his said lordship's name to publish and make known unto all persons whatsoever having or pretending any rights to lands by certificate of resurvey returned and lodged in his lordship's land office, upon escheat warrants, upon warrants for vacant cultivation, or upon special warrants for adding contiguous vacancy as aforesaid, that if they do not apply to the agent and make purchase of his lordship's right to such lands as aforesaid and sue out grants thereon accordingto the design and purport of the above recited proclamation, then and in all such cases the several tracts of land so resurveyed, and now lying upon certificate returned and lodged in his lordship's land office, are subjected as by the former proclamation to the first discoverer of such deficiency or failure in the payment of the purchase money, or neglect in making good rights to the same, which discoverer for his greater encouragement will be allowed the preemption of the lands so by him discovered to have been held and claimed, by any person or persons whatsover without paying the purchase money, or making good rights to vacancies as aforesaid. Whereof we charge his lordship's agent and secretary and all others concerned to take particular notice. Given at the city of Annapolis, this seventh day of February, in the 30th year of his lordship's dominion, Annoq. Domini, 1744.

LIBER, E. E. Folio 237.

CHAPTER XI.

OF SURPLUS LANDS.

SURPLUS land is the excess included within the bounds of surveys, prosecuted to patent, beyond the quantities intended and declared to be granted ; arising from the practice of surveyors of stating the distance from one boundary, natural or artificial, to another, on erroneous measurement, or by estimate, without any actual measurement at all ; and, it has always been distinguished from vacant lands as having been, (though erroneously or fraudulently) so included ; for the general definition of the latter is that it has never been *granted.*——The wrong done to the proprietary in this particular was very early felt, and complained of: it was the business of his officers to discover the cases in which it existed ; and, owing probably to their activity, the patentees holding such surplus were led in numerous instances to take warrants of resurvey, for the purpose of ascertaining the quantities of land thus improperly held, and paying therefor, either on the terms of the original grants, or according to the conditions of plantation existing at the time of discovery ; upon which, patents of confirmation issued for the whole, together with such vacant land, thereto adjoining, as had been included in the resurveys. The subject of surplus land, however, though regulated pretty much by the will of the proprietaries while the government of the province remained in their hands, fell afterwards under different interpretations, and was one of the principal grounds of the land laws, the first of which was passed in the year 1699. The principal intention of this law was to restrain the proceedings, and limit the power, of the proprietary, in respect to the excess arising from error or fraud in the early surveys, by declaring that boundaries or *calls* should be respected if they could be established, and could be gratified by certain specified extensions of the courses claiming them.—The operation, and the respective times of duration, of the several laws of this kind which were successively enacted will hereafter be noticed. For the present, it remains to be observed that the proprietary, objected to the first law as infringing his rights aud property, that his objections, and the answers of which they were susceptible, with the various disputes that took place on the question of a rightful power in the government to regulate the forms of surveys, and the interpretation of ancient grants, produced a long chain of legislative proceedings, which did not subside, or result in

any arrangement satisfactory to all parties, during the twenty-six years that the proprietary government remained suspended. How soon the original claims and principles respecting surplus lands were revived after the restoration of that government does not clearly appear.—At all times however there was such a thing recognized as surplusage in grants, though lessened by the effect of the land laws, and warrants are perceived until a late period to have been issued for the resurveying of lands for the purpose, among other things, of ascertaining the surplus according to the existing regulations; still there was, as might be expected, a backwardness in the land holders in that particular, and the proprietary issued various proclamations calling on all persons who held surplus land to make resurveys, and pay for the excess of their grants. It was under a proclamation of this kind, dated the 14th of June 1733, that the warrants heretofore spoken of, giving to the first discoverers the privilege of making resurveys on the lands of others, and appropriating to themselves the surplusage, appear to have taken rise :—The first warrant grounded on this proclamation was issued to Mark Herbert on the 12th of January 1735, and the last to Nicholas Lowe on the 12th of July 1738 ; the intermediate number of them being considerable. These were the warrants which, as I have heretofore observed, created such confusion in the province, and the short period of their duration shews that the dissatisfaction occasioned by them was such, as the proprietary found it inconvenient to encounter ; and although some of these warrants must have resulted in patents, for the surplusage, I have been informed that the claimants under such patents did not succeed at law where their titles were contested.—This however is a matter which it is not within my province or design to investigate, as my enquiries extend no further than to the operations of the land office, with exception of this short lived expedient of the proprietary to obtain payment for surplusage where the owners of the patented tracts including it would not themselves make resurveys, and excepting also those instances in which the government, prior to the revolution of 1689, ordered lands to be resurveyed for the discovery of surplus, there was no efficient method of obliging people to account for the excess of their grants. Repeated proclamations were the only resource of the proprietary, and through the apparent fairness of his claim, the idea entertained of his power, and the various inducements that have always existed for making resurveys, his views and interest were occasionally gratified in relation to surplus land. The principle, though subject as has been remarked, to contest at law, continued to obtain in the land office, and warrants of resurvey generally contained

the condition that the surplus, if any, should be paid or accounted for; but, although the proclamation of 1756, immediately to be inserted, will shew that the proprietary had in no manner given up his claim to surplus land, I find that the petitioners for warrants of resurvey seldom say any thing about surplus after the year 1747, and I believe that, notwithstanding the final effort just referred to, the proprietary's pretensions in this particular became after the failure of the surplus warrants in 1738, by degrees, less and less respected, until they were brought to a state, which enabled the present government, upon succeeding to the proprietary rights, without any violent change, to give a *quietus* upon the article of surplus land in grants. As to the justice of the proprietary's claim in this respect, I shall let it rest upon the grounds set forth in his proclamations, only remarking that the argument against it, drawn from the words "*more or less*" in patents, which, taken literally, would seem to preclude any future accountability for excess, as well as any allowance for deficiency, had been early, and repeatedly declared by the first and second proprietaries to intend according to the rule they thought proper to adopt on that subject, *ten in the hundred over or under, and no more.* Why this established interpretation of the words in question, was never cited in the proclamations respecting surplus, I cannot judge, as it can scarcely be supposed that the fourth proprietary was not apprized of the public acts and regulations of his predecessors. There does however appear to have been a wonderful ignorance or uncertainty both in England and in the province concerning the conditions of plantation, and other documents and authorities relative to land affairs.—Frequent instances and proofs of this appear in the council records, including those of the upper house of assembly, from the year 1692 downwards. Whether from this or other causes there seems to have been a good deal of (*a*) feeble-

(*a*) It is not to be inferred from this that the governors and principal officers of the three last proprietaries were deficient in energy or ability, for there are many proofs to the contrary, nor is it to be supposed that the proprietaries themselves did not understand their affairs and their interests. The question of surplus land was extremely important to them, but the repetition of proclamations of the same tenor, though it might frighten a few individuals into compliance, served to demonstrate to the more discerning, that the coercive means of the government were not equal to its objects, and, so, to fortify their resistance to the claim. It appears therefore that the measures of this latter period in respect to surplus were ill taken, and the only reason that can be assigned for it is that the proprietaries above mentioned all came to the succession in their non-age, and that their respective guardians either through the want of a clear knowledge of the past transactions and the actual state of the province, or as not possessing in the idea of the people a power much to be respected, did not keep up a strong and uninterrupted hold upon surplus land, but left the claim to the support of these occasional proclama-

ness in the efforts of the latter period of the proprietary government to enforce the point of payment for surplus land, for a coercion attempted and not maintained always leaves the party attempting it in a worse state than before. The cajoling system of the second period answered the purpose much better, and, in fact, no one of the proprietaries knew the people of Maryland well except Charles, the son of the original founder; who, as governor, and proprietary, spent upwards of five and twenty years in the province. He made little noise about surplus land, but encouraged resurveys and availed himself of them to get paid, and at very high rates, for the surplus. In cases where considerable quantities of land were believed to be held in that way, as in the instance of colonel Thomas Taillor noticed in a former chapter, he *ordered* resurveys to be made, and his mandates were not disputed; for, the persons holding quantities of surplus large enough to attract the notice of the proprietary were, of course, men of prominent note, who either held, or hoped to obtain, offices or favours from the government, and when these men submitted it was natural for others to do so. I shall now insert the several proclamations here referred to, preceded by a proposition, &c. in council, which will corroborate what has been said concerning the address used by the second proprietary, in relation to this subject.

At a Council held at the Ridge, in Anne Arundel county, the seventh day of November, Anno Domini, 1683.

"Proposed by his lordship whether it might not be necessary to sett forth his proclamation for the satisfaction of the inhabitants, to give them time convenient for the sueing to his lordship for the surplusage of their lands before any other persons who make it their business to prye thereinto, and are daily suitors to his lordship on that score.

"Advised nemine contradicente, that the same would be of greate moment and satisfaction to the people, and that his lordship please to issue out proclamation accordingly, taking his measures (as to the consideration for all surplusage to be given) from the quality of the land reduced to three heads, (viz.) meane, indifferent and good.

"Advised also, and it is the opinion of this board confirmed by his lordship, that the words (more or less) in all

tions. It must be acknowledged however that, of all the various rights and claims for which the sucessive proprietaries had to struggle against the growing spirit, intelligence and strength of the people this was the most unmanageable, and that its intrinsic justice was every day decreasing through the increased length of possession of the lands in question.

grants shall and doe extend to ten in the hundred, over or under, and noe more.

R. R. B. folio 1.

N B. No particular proclamation is found to have been issued in consequence of this advice, but the 5th article of the instructions to the land council is apparently grounded upon it.

"Ordered by the right honourable the lord Proprietary that the following proclamation issue:

"MARYLAND, *ss.*

"BALTIMORE.

"*By the right honourable the lord proprietary,*

"A PROCLAMATION.

"Whereas several of our tenants by colour of grants, surveys or otherwise, hold larger quantities of land than are mentioned in such grants or surveys or were intended to be granted to or surveyed for them, or those under whom they claime, for which surplus lands they or those whose estates they have, never paid any manner of consideration, to the great deceipt and prejudice of us and the hindrance and discouragement of others who would have taken up and improved such surplus lands, and whereas all the measures which have hitherto been taken to prevail on the possessors or holders of such surplus lands to pay for and take out patents or grants to invest themselves with estates of inheritance in them (as in common justice and prudence they ought to have done) have proved ineffectual, and the said possessors or holders have unjustly withheld and still withhold the said surplus lands under a vain and groundless pretence that the *words more or less* in their grants or surveys entitle them to great quantities of land which they or those under whom they claim never bought or paid for, which practice is in itself so manifestly unjust and so injurious to us and the province by hindering the peopleing and improvement thereof, that we are determined not much longer to indure it but to assert our own just right with all convenient speed, either by vacating the grants containing such surplus as fraudulently obtained, or otherwise, as the case may require, which we had long since done had we not been restrained by the greatest tenderness and regard for the quiet and welfare of our tenants, and the hopes we entertained that they would of their own accord have taken the proper steps to have done us justice and secure to themselves and their posterity indefeazable estates upon very easy terms in the surplus lands by them possessed; to the end therefore that no person who is possessed off or holds any surplus land by colour of any grant, survey or otherwise and for which the conside-

ration hath not been really and bona fide paid to us or our ancestors, may pretend surprize or ignorance, we have thought fit by this our proclamation to publish and declare, and we do hereby publish and declare that any person who is possessed of or holds any surplus lands by virtue or pretence of any grant, survey or otherwise, and for which the consideration hath not been paid as aforesaid and who shall neglect or refuse to apply to our land office in order to pay for such surplus and obtain our grant in due form for the same on or before the fourteenth day of June, Anno Dom. 1735, shall be proceeded against according to law, in order to vacate the grant or grants containing such surplus as fraudulently and unjustly obtained, or otherwise, as the case may require, and that no person who shall elapse the said time shall ever have or obtain any grant from us for such surplus land or any part thereof; and we hereby publish and declare that any person who shall discover any such surplus land shall not only have the preemption but also two years rent thereof as an encouragement for such discovery, and to the end our intentions herein may be generally known we strictly command and injoyn all our sheriffs not only to publish this our proclamation at the respective court houses and other the most publick places in their countys, but to affix copys thereof in all such places. Given at the city of Annapolis, this 14th day of June in the nineteenth year of our dominion, Annoq. Dom. 1733."

GREAT SEAL.

"MARYLAND, *ss.*

"*By his excellency Samuel Ogle, Esq. Governor and commander in chief in and over the province of Maryland,*

"A PROCLAMATION.

Whereas his lordship by his proclamation dated the 14th June, 1733, did think fit to direct and declare that any person who was possessed of or held any surplus lands by virtue or pretence of any grant, survey, or otherwise, and for which the consideration had not been paid to his lordship or to his ancestors, and who should neglect or refuse to apply to the land office in order to pay for such surplus and obtain his lordship's grant in due form for the same on or before 14th June, 1735, should be proceeded against according to law in order to vacate the grant or grants containing such surplus, as fraudulently and unjustly obtained, or otherwise, as the case should require, and that no person who should elapse the said time

should ever have or obtain any grant from his lordship for such surplus land or part thereof. But his lordship, from a tender regard to his tennants, having taken into his consideration that many of them by inadvertinency or for some other excusable cause, may have elapsed the time prescribed by the said proclamation for taking up the said surplus lands and thereby have subjected themselves and family to the risque of being very much prejudiced; therefore his lordship hath condescended, and it is hereby accordingly declared, that any person having the right or title to any tract or tracts of land within whose bounds any surplusage is contained, shall and may have liberty to apply, from and after the date of this proclamation, for a warrant or warrants to resurvey such tract or tracts of land and include the surplus thereof, and obtain a patent for the same, provided such application be made in a reasonable time, and that no other person, either before the date of this proclamation or before such application to be made as aforesaid, shall have made a prior discovery of or application for such surplus lands, and provided the person or persons intended by this proclamation to be indulged in the permission of taking up their surplus lands as aforesaid, should not be thought, either from the circumstance of their case, or for other reasons, unworthy of his lordship's speciall favour in this particular. Given at Annapolis, this tenth day of September, in the twenty-first year of his lordship's dominion, Annoq. Domini, 1735."

LIBER F. F. folio 33.

" 1742, April 22nd.

" *An instruction to our trusty and well beloved Samuel Ogle, Esq. governor of the province of Maryland.*

" C. BALTIMORE.

" Whereas by our proclamation dated at Annapolis, the 20th day of June in the 19th year of our dominion, Anno Domini 1733, we thought fit to publish and declare that the rent of four shillings sterling as usual for every hundred acres of surplusage land thereafter to be granted, should be reserved and payable.

" And whereas it has been represented to us great part of the best and richest land taken up, and that most of what remains is of less value, and lies in small quantities, and being willing to shew our good tenants all reasonable favour and

indulgence, we hereby impower you to grant all surplus land in our province whereon no patents of confirmation have already issued upon the like terms, conditions and reservation of rent as mentioned in the original grants or patents for such land; the partys applying first compounding with our agent for the purchase money, interest thereon, and rent from the date of the original grant for such surplus land. C. B.

Given at London this 12th day of August in the 27th year of our dominion, Anno Domini, under our hand and lesser seal at arms, 1741.

By his lordship's order,

JNO. BOWNING, Sec'y."

LIBER L. G. No. D. fol. 9.

" April, 1756.

" MARYLAND *ss.*

" *By the right honourable the lord proprietary,*

" A PROCLAMATION.

" Whereas several of our tenants in this our province do, under colour of old grants obtained from our noble ancestors, hold several acres of land as comprised within the metes and descriptions of such grants more than the quantities therein expressed, and more than were by the original patentees applied for, or by our said ancestors intended to be granted to such persons respectively, without having heretofore paid any purchase money, quit rent or other acknowledgment for such surplus; which being to our said ancestors a manifest fraud, and a glaring injury to ourself, might (were we disposed to proceed with rigour) prompt us to a means of redress not only destructive of any pretence of claim to such surplus lands as aforesaid, but likewise subversive of what titles such patentees, or those who claim under them, may have to the true quantities of land applyed for and expressed in such patents as intended to have been thereby granted, and ruinous to many of our tenants in our said province:—We nevertheless being willing and desirous to those of our said tenants, who are inclined to yield us content in the premises, with all possible lenity, have resolved to admit a purchase of such surplus lands those who claim under such original grants, upon the most easy terms; and upon the requisites hereafter mentioned being complyed with, to grant and confirm unto such persons respectively a full, absolute and indefeazible estate of inheritance in fee simple against us and our heirs both in law and equity, in and to such surplus as aforesaid. We do therefore, by this our proclamation, publish and declare our assent and pleasure as follows, to wit: That every person within our

said province, who hath or claims any land as comprized within the meets and descriptions of his grant more than the quantity expressed in such grant as intended by our said ancestors to have been thereby granted, and who shall within the space of two years from the date hereof apply to the judges of our land office for the time being, for a warrant to resurvey the original tract according to its ancient metes and bounds, and to return a certificate of such resurvey to our said land office expressing therein the true quantity of all the land contained within the metes and descriptions of the said original survey, shall have the same issued to him accordingly.

And that upon return of such certificate to our said office, (the forms of our said office being complyed with) grants shall issue thereon to such person, thereby vesting him with a full absolute and indefeazible estate of inheritance against us and our heirs both in law and equity in fee simple in the lands so as aforesaid, to be contained and described in and by the certificate to be returned as aforesaid:

Such person paying to the proper officer of our revenue the purchase money for such surplus land at the same rate for every hundred acres as was formerly paid for the purchase of every hundred acres of the quantity expressed in such original grant.

Reserving to us and our heirs in such grant hereafter to be issued the annual quit rents, for such surplus land at the same rate for every hundred acres thereof, as is now payable by virtue of the original grant for the quantity of land therein expressed. And we do further assent and agree, and do hereby authorize and direct that our proper officers of our revenue give to all intents and purposes both in law and equity, to the person complying with the requisites aforesaid a discharge from and against all purchase money and arrearages of rent, whatsoever that may be due and payable to us from the respective dates of such original grants, for or by reason of such surplus land as aforesaid, any thing in any former proclamation or instruction contained to the contrary hereof in any wise notwithstanding.

And this our proclamation we have caused to be entered on record in our said land office and other offices of our revenue, there to remain as a rule and direction to our proper officers, touching the premises. Witness our trusty and well beloved Horatio Sharpe, Esq. governor and commander of our said province, this 17th day of January, in the fifth year of our dominion, Annoque Domini, 1756.

J. ROSS, C. f. Coun.

HORATIO (The Great Seal in Wax appendant.) SHARPE.

LIBER T. I. No. 9. fol. 42.

CHAPTER XII.

PROCEEDINGS IN THE NATURE OF DISPENSATIONS OR REMEDIES.

THE extracts of which I have here judged it proper to form a particular class are examples of various proceedings according with the title I have given them. They might be more numerous, but there is no design in exhibiting them but what is sufficiently answered by the few here collected. How far these, and other "acts of favour," as the proprietary government was fond of calling many of its proceedings, are to be considered as evidencies of the regular practice of the Land Office I shall not pretend to determine; but, being inclined to think that they demonstrate rather the power of the proprietary, and the discretion vested in his officers, than the common operations of a regulated system, I have not shewn them in all the variety which the records would afford. The great number, indeed, of cases which might come under this description, and the difficulty of distinguishing those which are decided on their merits from others resting on mere influence and favouritism, renders a selection somewhat perplexing, and is in part the cause of my giving so slight a sample of these proceedings.

Lost Warrant Renewed.

"Luke Gardiner declares on oath that a warrant granted "to him for 350 acres of Land had been *accidentally lost*, "that neither himself nor any other person by, for, or under "him, or by his consent, privity or knowledge, ever made "use of any part or parcel thereof, or received any benefit "thereby, save only one hundred acres part thereof by him "assigned to Thomas Mattenly, &c.

"Warrant granted for 250 acres to Richard Eleden, as- "signee of Gardiner."

LIBER, W. C. No. 4, folio 106.

Warrant renewed upon abandonment of a survey actually made, but of which no certificate had been returned.

"Andrew Abington made oath that, although upon the return of a warrant for five hundred and fifty acres granted to him, &c. there was an endorsement of the surveyor purporting that a survey had been made under the said warrant of 150 acres, called "the Indian Cabbin Branch," he the said Abington

never had taken nor would take the benefit of the said survey —having returned no certificate of it &c. and prayed therefore new warrant for the said quantity of 150 acres—which was granted."

LIBER W. C. No. 4. folio 331.

The warrant is supposed to have been *returned* to the office as soon as it was expended by the above mentioned survey, the other 400 acres having been applied to preceding surveys. The practice which this case discloses of the return of warrants to the Land Office, when fully executed or applied, was not in use in the latter period of the proprietary government.

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By the following case it appears that the relinquishment of a survey, even before a certificate was returned, was a privilege not always allowed as a matter of course.

" 27th Nov. 1680.—George Robins represented that he made a survey of three hundred acres but had not returned his certificate, the land proving to be within the lines of Robert Smith; he therefore prayed that the certificate might be " set aside" and liberty given him to renew his warrant for the said quantity of 300 acres. Whereupon it was ordered that the surveyor who laid out the land should appear on the next council day, and that upon his testifying on oath the truth of what was alledged the prayer of the petitioner should be granted—no further proceeding in the matter is discovered."

Council Book, C. B. folio 103.

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Proceedings in case of lost certificate.

" The mayor, recorder, &c. of the city of St. Mary's, by their petition to the governor, state that Robert Coger, deceased, had in his life time a parcel of land surveyed for him, containing one hundred acres, which by his last will he devised to the corporation of St. Mary's for a public purpose, but that Charles Boteler, by whom the survey was made, has lost the certificate of the same—They therefore pray that he may be directed to return another certificate of survey; that the same may be entered upon record notwithstanding that it is not returned in time, and that patent may issue to the petitioners for the use intended, &c."

" The prayer of the petition is granted, but the order issued in consequence is of the nature of a warrant for a new survey."

LIBER No. 19, fol. 613. October 7th, 1677.

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" Robert Smith by his petition sets forth, that in the year 1676, he had two surveys made for him, and certificates there-

of duly returned into the secretary's office, where they were eaten by the rats, and " never as yet entered upon record," he prays therefore that two certificates annexed to his petition, which are proved by the oath of John Stanley, the surveyor, to be true copies of the former, *taken out of his book of surveys*, may be entered upon record, and that patents may issue to him the petitioner for the same."

" Ordered that the certificates in the petition mentioned " be entered upon record in the land office, and (the condi- " tions of plantation being performed, as is alledged) pattents " issue for the same as prayed."

COUNCIL BOOK, C. B. fol. 304, an. 1683.

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Party certificate received where the office certificate is found erroneous.

" At a " *Provincial Court*" held at Saint Mary's the 12th November, 1673.

" Thomas Pratt of Ann Arundel county, represents that in the certificate of resurvey made for him by George Yeate, and returned to the office, *one line of the land* was left out by mistake of the said Yeate—he therefore prays that a copy of the certificate (the said omission excepted) annexed to his petition and signed by the said surveyor may be received, and that the former certificate my be vacated upon record and patent issued to him on the new one.—Which the court ordered accordingly."

COUNCIL BOOK, No. 17, fol. 580.

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Irregular survey confirmed.

At foot of the record of a certificate returned in 1668 for Oliver Spry, is the following order.

" Whereas the land in the foregoing certificate was surveyed by the deputy surveyor, after the force and date of the return of the warrant by virtue of which the same was surveyed; wherefore by order from the right honourable Charles Calvert, Esq. lieutenant generall of this province the aforesaid land is fully confirmed and allowed of as if the same had been surveyed by special warrant, &c."

COUNCIL BOOK, No. 11, fol. 511.

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Patent ordered although warrant not found.

" Forasmuch as I formerly granted unto colonel William " Chandler a warrant for 200 acres of land, which was laid " out by captain Randolph Brandt of Charles county, in " Panguiah manor and certificate thereof returned as I am

" informed, and the said warrant being lost hinders a pat-
" tent to issue for the same, I do therefore hereby order you
" to issue out a pattent to the said colonel William Chand-
" ler it being the order of

C: BALTEMORE."

COUNCIL BOOK, W. C. No. 4, fol. 413, an. 1684.

Alteration of patent.

" JACK LEWELLIN,

" 24th January 1680.

" I hereby order and impower you to alter the rent of Mr.
" Richard Marsham's pattent for three hundred acres call-
" ed Black Walnutt Thickett, from double to single rent, and
" for your soe doing this shall be your sufficient warrant.—
" Given at Mattapuny the day and year abovementioned.

C. BALTIMORE."

" *To Mr. John Lewellin.*"

LIBER, W. C. No. 2, fol. 193.

" BY THE GOVERNOR.

" MARYLAND, *ss.*

" Whereas it hath been made appear unto me that a pa-
" tent granted under the great seal of this province, unto
" lieutenant Thomas Courtenay and captain Henry Darnall,
" bearing date the 23rd day of June 1675, for four hund-
" dred acres of land called Hafes upon the right of Fouke
" Brynell, Christoper Jacobson, Roger Sherlyn, William Ar-
" rery, John Jaigle, Nicholas Bradley, William Price and
" Jacob Johnson; that the said rights were old rights, and
" the said patent ought to be single rent, that is to say but
" two shillings for each hundred acres, whereas the same is
" made for double rent, that is to say, four shillings for every
" hundred, you are therefore hereby ordered to amend the
" said pattent and the record thereof, and make the same
" as it ought to be, that is to say single rent, two shillings
" for every hundred acres and no more; and for so doing
" this shall be your warrant. Given under my hand this
" 20th day of April 1677.

" THOMAS NOTLEY."

" *To the hon'ble William Calvert, Esqr. principl. secretary of Maryland.*" } *These—*

LIBER No. 19, 442.

Patent amended.

" Upon a petition in 1682, stating, in respect to a tract of land granted in 1668, to Jeoffrey Minshul, and by con-

veyance become the property of the petitioner, that in the patent of the said land the lines " are not rightly recited ac- " cording to the first and original survey thereof," as by copies accompanying the petition, would appear, the first line being expressed in the patent south east, &c. instead of south west, &c. the following order was passed.

" Copy of the original certificate filed in the land office, " attested by the register of said office, being produced " and the allegations laid in the petition appearing to be " true, Ordered thereupon that the error committed be rec- " tified, both in the patent and the record thereof."

COUNCIL BOOK, C. B. fol. 243.

—

" A patent of confirmation intended for William Carpenter, being either through his mistake or that of the clerk, issued in the name of his father Simon Carpenter ; the proprietary by his order of the 21st May 1683, directs the secretaries of the province to alter and amend both the patent and the record of it, by " *rasing*" out the name of Simon, and replacing it by that of William."

COUNCIL BOOK, W. C. No. 4, fol. 346.

—

Exemplification of Patents.

Of the importance attributed to the possession of patents under the great seal of the province, notwithstanding the evidence of title resting upon the original certificates in the office, and the records both of the certificates and patents, numerous instances are discovered. As long as people could occupy lands without paying either rent or caution, they were not in a hurry to take patents, but required a stimulus from the government, as the various proclamations on that subject sufficiently shew ; but when every thing was fair, and their certificates ready for patent, they did not in a general way neglect to secure their lands by obtaining that instrument which is the essential evidence of title, or rather the title itself: in the same spirit, when a patent was by any accident lost or defaced, the party was anxious to remedy it by getting another, or something equivalent to it. This gave rise to what are called patents of exemplification, for granting which, express authority is found in instructions from the proprietary of the 20th of November 1657. The following is the form of his proceeding.

—

" CECILIUS, &c. *To all, &c. Known ye that*

" Whereas we have had the inspection and seen the instrument of certain letters patent, the tenor whereof followeth in these words, viz.

(Here the original patent is recited, from the record, at full.)

" And we having seen the tenor of the said letters patent, " have granted the same to be *exemplified.* In testimony " whereof, we have caused the great seal of our said pro- " vince of Maryland to be hereunto appended, the " day of in the year &c."

CHAPTER XIII.

PROCEEDINGS AND CUSTOMS DISUSED.

IN the course of the preceding examination we have had occasion to notice various matters which do not now enter into the practice of the land office, such as the surrendering or letting fall of warrants, certificates, and patents; the transferring patents by assignment endorsed thereon, the vacating of former grants upon resurveys, the recording of certificates before patent was issued; the exemplification of patents, &c. There are other usages which, as being rather insulated in their nature, we have hitherto passed by, and of which it is now proposed to take some brief notice—but first it is requisite to give a further account of some of those which have already been touched upon. Of these the most important is the assignment of patents, by which a complete title in lands was proposed to be conveyed from one person to another without a deed indented, or any of the ordinary formalities observed in such transactions.

The first instance on record of the transfer of a patent by endorsement thereon differs materially from the subsequent assignments, but may be deemed a step towards the more simple form which was afterwards observed in these transactions, the patent, in this case, which occurred as early as 1642, is surrendered back to the proprietary *for the use* of another person, which use and intention are supposed to be expressed by endorsement on the patent itself. The difference is that instead of the new acquirer's holding the land by the assigned patent, it is cancelled, and a new one granted. The following is the case here referred to.

" 29th of November 1642.

" Jane Cockshott, widow, prayeth to have a patent in the name of the freehold lately granted by patent to Randall Revel, and by him surrendered into his lordship's hands for the use of the said Jane.

" *Patent—Cecilius, &c.*

" Know ye that we, for and in consideration thatt Randall " Revel, being seized in fee of a certain freehold, part of " the manor of West St. Maries, by vertue of a grant to " him the said Randall from us by patent under our great " seal, bearing date 17th October 1740, hath surrendered into " our hands the said grant to the use of Jane Cockshott, " widow, Doe therefore hereby give, grant and confirm un- " to the said Jane, all that neck of land called Green's " Point, &c. *ut* in Revel's patent.—Given 29th November " 1642."

LIBER No. 1, fol. 24.

—

The following is a record of several assignments endorsed on the same patent, made, it is supposed, by request of some of the parties interested.

" On the back side of a grant to Francis Poesey, for four hundred and fifty acres of land, bearing date at St. Maries 14th May 1651, is this assignment, viz.

" Know all men by these presents, that I Francis Poesey do assign over all my whole right and title and interest of this within mentioned patent unto Richard Watson, his heirs, executors, administrators and assigns (only one hundred acres excepted, unto Walter Guest) and to perform the same I have hereunto set my hand this 10th day of February 1652.

Witnessed by John Hutch, John Martin." FRANCIS ⋊ POESEY, his mark.

" This 10th February 1652.

" Whereas I Francis Poesey have freely given unto Walter Guest, one hundred acres of land, out of a patent day, sold to a Richard Wattson, which is to say, beginning at the white oak Potomack river, and the breadth running upon the said Potomack river side, and the length extending into the woods. To have and to hold the said land to Walter Guest, his heirs and assigns forever, as witness my hand

Witness by us, Richard Wattson, John Hutch." FRANCIS ⋊ POESEY, his mark.

" On the back side is this assignment written,

" This 29th July 1653.

" I Walter Guest do assign all my right and title of this within mentioned unto Walter Bayne or his assigns, as witness my hand. The mark of WALTER ⩚ GUEST.

Witness by me John Hutch.

Underneath again the former is this assignment, viz.

" I Walter Bayne do assign over all my whole right and title of this within mentioned hundred acres of land, unto Richard Wattson. Witness my hand this 6th October 1653.

The mark of

Witness WALTER ∧ BAYNE."

John IT Taylor.

LIBER Q. fol. 348.

—

The following case exhibits the most usual form of assignment of patents, sometimes strengthened by acknowledgement in court, but often not so.

" On the back side of a pattent for a parcell of land called Wookstock, lying in the middle branch of Wye river, on the eastermost side of the branch granted unto John Wright of the county of Kent, gent. for nine hundred acres, the ninth day of January anno, MDCLXVI. was thus written.

John Wright asst. of patt. to William Shirt, 900 acres. } Know all men by these presents, that I John Wright of the county of Kent, doe assigne over all my right, title and interest of the land within specified unto William Shirt, his heirs, executors, administrators and assigns, to have and to hold quietly, to possess and enjoy from me, my heirs, executors, administrators or assigns, for ever, or any person or persons whatsoever having any title, clame or interest under me thereunto, being sold by me the said John Wright, before the solemnization of matrimony. In witness whereof I have hereunto sett my hand, the nineteenth of March, one thousand six hundred sixty-six.

JOHN WRIGHT, seale."

" Signed, sealed, and delivered in the presence of us, Phillip Stevenson, Thomas Vaughan, clk. acknowledged in court, and ordered to be recorded.

" Test, THOMAS VAUGHAN, Clk."

LIBER No. 11, fol. 347.

—

The following case like the preceeding one of Poesey, shews several assignments of a patent, and illustrates some other principles.

" John Bayley by his petition, sets forth that he has a legal right to three hundred acres of land, called Nunsoake, bought and paid for by his father, who was afterwards killed in the proprietary's service—that being under age, he is incapable of obtaining possession thereof, and therefore prays that his lordship would confirm to him the said land, &c."

Underneath the petition are the following entries.

" On the back side of a pattent granted to John Nun, for three hundred acres of land, bearing date the 11th day of

October, anno 1647, was thus written, (viz.) This patent, with all my right, title and interest, is assigned over to John Bayley or his assigns, this seventeenth of March, 1653, by me

" WALTER DEANE, administrator of John Nun.

" Testes,
" John Haman.

" This patent, with all my right, title and interest is assigned over to Thomas Phillips, or his assigns, this 12th of April 1655.

Signum
ELLINOR ⋈ BAYLEY.

Testis, } Wm. Bretton and
} Walter Hall."

" This patent with all my right, title and interest is assigned over to Luke Barker, or his assigns, this sixteenth of February, 1657.

his
THOMAS ⋈ PHILLIPS,
mark.

Testis } Wm. Bretton,
} Walter Hall.

" This patent, with all my right, title and interest is assigned over to Thomas Phillips, or his assigns, this 8th of January, 1658.

L. BARBER."

—

The governor without respecting the assignment of Nun's administrator to Bayley—that of Elinor Bayley (apparently the widow of John) to Philips, or the subsequent assignments between Philips and Barber, determines the land to have become *escheat* by the original patentees dying intestate and without lawfull issue, and passes a grant to Bayley, the petitioner."

LIBER, No. 12, fol. 394.

Under an assignment in a more ample form, than any of the preceding but still endorsed on the patent are the following entries.

" This patent was made over in court, April 1st, 1673, by
" Edward Parish to John Beck, and the assignment thereof
" was owned by him to be his act and deed.

Test me,
NL. HEATHOCOATE, CLK."

" Whereas the land within mentioned is escheatable, I
" hereby declare that no advantage shall be taken by me.

CH: BALTIMORE."

LIBER, No. 19, fol. 378.

It remains to be observed upon this subject that an act of Assembly passed at a session commencing in April 1671 cured the defects of titles resting upon the assignment of patents or upon other writings wanting the usual formalities. It is entitled "an act for quieting possessions:" it recites that at the beginning of the plantation, and until of late years there was no settled course of conveying lands, tenements, or hereditaments, by means of which, the titles of many bona fide purchasers become doubtful, and law suits in consequence arize:

"Therefore, all sales, gifts or grants theretofore made by writing only, without a seal, to be forever accounted good against the vendors, their heirs and executors, and all persons claiming dower from such vendors &c. any error in the form only, of such writings notwithstanding; and whereas *divers assignments of patents*, *endorsed* thereon, are worn out, and many other sales in paper either worn out or totally lost, all such sales, &c. as can be proved by witnesses to be good and available, any law, &c. notwithstanding."

—

The recording of certificates prior to and independent of their being patented is a practice which I must suppose to have been long disused, since, among other matters which nothing short of such a research as has been made for the purpose of this compilation could probably have brought to light, it was not known of late in the land office to have existed, the evidences of it being chiefly in the land records of the council, including those of the select council for land affairs. It is needless to insert examples of this practice; the proofs of it occur in every part of the records abovementioned. The only question is at what period it ceased, and this I cannot venture, upon mere indications and appearances, to determine. It evidently continued, however, till the dissolution of the land council in 1689. During the period of the royal government which reached the year 1715, the violent disputes that took place between lord Baltimore's officers and those of the King, concerning the land office, must necessarily have broken in upon this usuage, for the certificates of the govermental surveyors were generally returned to the secretary, who sent them to the proprietary's officers to be patented, and accordingly the issue of patents is in many instances *noted* immediately below the record of the certificates. As a regular practice I cannot be certain that the recording of certificates preparatory to patent was afterwards revived. They might, and in all likelihood they were, recorded where it was desired, for there is to the present day in respect at least to the Western (*a*) Shore land office, no law or rule that expressly

(*a*) The register of the Eastern Shore land office is by law directed to record certificates upon their being patented, and *not before*. This di-

forbids the recording of certificates when they are ready for patent, although the circumstance of their being subject to caveat until actually patented may be a good *reason* why they should not till then be entered on record: but under the practice of 1684, when land affairs were in the greatest activity, I conceive that it was not only customary but necessary that a certificate should be recorded before a patent was passed on it. I have been somewhat particular upon this point, although it cannot be exactly settled as to time, because it must necessarily have influence in those cases in which courts of justice are required to *presume* patents which do not appear, at least so far as the record of a certificate is proposed as the ground for that presumption.

We have noticed in the early practice the designating of land, intended to be surveyed, by a caveat in the office, and the marking of trees as a still more conclusive location and appropiation of the land until it could be actually surveyed.—It has been observed that these two customs took their rise at a time when the government of the proprietary had been subverted, and that they were therefore not to be considered as among the established usages in land affairs. The right of entering caveats for particular parcels of land was affirmed by an act of Assembly "concerning the rights of Lands" passed in the year 1654 during Cromwell's protectorship; but this act also declared that, without any application whatever to lord Baltimore or his officers, those who transported themselves to the province had a right to land by virtue of their transportation, and might enter their rights in their several county courts; positions which certainly could bear a test with the charter, however reasonable they might be in themselves: the locations by caveat therefore do not appear to be in use after lord Baltimore got completely reinstated in his rights at the period of the *restoration* of Charles II, but the marking of trees is found to have been occasionally permitted afterwards. The following are examples of these proceedings:

At a provincial court, held 1655.

"Michael Brooke enters a caveat for 200 acres of land lying easterly in the Hunting Creeke, and running west into the woods upon the Five Cabbins, now seated according to his marked trees."

LIBER No. 3. folio 134.

"For Henry Coxe, caveat, } Five hundred acres of land, being due to him by assignment from capt. John Barriffe,

rection however, which can be founded on no reason peculiar to the Eastern Shore, would certainly be interpreted as a general one if a question concerning it was to arize.

is granted to the said John Coxe upon a place near the coves as he shall find out not yet possessed."

LIBER No. 3. folio 163.

"At a provinciall court held at Patuxent, 16th June, 1656, caveat of two hundred acres of land is granted to John Bagbey, at the mouth of Hunting Creek, on the land which John Turner formerly lay'd claime to."

LIBER No. 3. folio 189.

"Caveat of one hundred acres of land is granted unto William Pritchard, lying in the Hunting Creeke next to Mr. Michael Brooks' land."

LIBER No. 3. folio 190.

"Caveat of 200 acres of land is granted to Ishmael Wright lying at the deviding joyning to the land which he hath taken up already, and he is to *make* his rights appear at the next court."

LIBER No. 3. folio 190.

"*27th January*, 1756.

"William Stevens doth this day enter a caveat for 200 acres of land upon a neck of land upon Patuxent river, adjoyning to 200 acres of land formerly surveyed for the said Stephens in the same neck."

LIBER No. 3. folio 241.

"At a provincial court held at Patuxent, 10th March, 1656. Caveat for land } Caveat for 200 acres of land is granted unto John Bagbey. } to John Bagbey, upon the northerly side of a Creeke adjoining to the land of Thomas Thomas, where the Indians now dwell, being in lieu of 200 acres of land formerly taken up by the said Bagbey, upon the lower side and adjoining to the mouth of the Hunting Creeke."

LIBER No. 3. folio 244.

"Caveat for land } Caveat for 150 acres of land is granted to John Dammarell. } to John Dammarell, adjoining to the 200 acres of land of John Bagbey's abovementioned."

LIBER No. 3. folio 244

"*May 24th*, 1663.

"Doctor Luke Barber, enters these rights, viz. John Vaughan, Alice Welchmaid, John Newman, Stephen Davis, and Alice Ligh."

"Warrant *inde* to surveyor general to lay out for Luke Barber 250 acres, return 30th November next.

"These are to impower Luke Barber, or whom he shall order, to mark and sett out said land, for his security till I or

my deputy have a convenience to survey it. Given under my hand this 24th of May, 1663.

HIEROME WHITE."

" I doe hereby order and impower you, Richard Hill to cause to be marked some trees on a small tract of land, about four hundred acres, or thereabouts, lying at the head of Bohemia river, being the usuall landing in the road to Appaquiminy. Given under my hand this 26th June, 1675.

CHARLES CALVERT.

To Mr. RICHARD HILL."

LIBER No. 15. folio 360.

The resurveys under the direction of juries, and the annual circuits made, and courts of enquiry held, by the surveyor general, are among the usages long since laid aside. The former must have been enormously expensive to the parties, and their verdicts on record afford abundant evidence of the incompetency of the people usually summoned on those occasions to weigh and compare the testimonies offered. They were not in use in the latter period of the proprietary government. As to the courts of enquiry, for holding which annually in every county a particular commission was issued to Baker Brooke, esq. in 1674, it is not known in what degree this design took effect; any more than that of processioning for the establishment of boundaries, of which there appear some traces, although I do not perceive any better authority for it than a bill published for the consideration of the people, but never passed into a law. They have been at all events so long abandoned, as to be in a manner out of knowledge at the present day.

The only remaining subject that I shall notice under this head is the proceeding by writ of *extent*; a thing which has indeed no necessary connection with the land office, but which nevertheless, in the jumbled situation of all public establishments and proceedings in the infancy of the province, appears like a part of the system under examination. Without undertaking to explain the term *extent* I will shew how the proceeding so called was applied in Maryland: The act for deserted plantations, passed in 1650, subjecting lands to forfeiture in the cases therein specified, contained an exception in favour of orphans under sixteen years of age: in the following year the proprietary's attorney general, Mr. Thomas Hatton, represented to the *court* that some manors and other lands were, under colour of that exception, claimed on behalf of orphans, which would otherwise have been forfeited; but that no measures were taken for paying the arrears of rent, or seating the plantations, so as to afford a probability of

his lordship's being at some future time paid his rents and dues in respect to those lands ; he therefore moved the court to " appoint some course, either by way of extent or otherwise" whereby his lordship might be secured and satisfied ; whereupon it was ordered that for all lands in the predicament described his lordship, his heirs or assigns, should " from thenceforth have the same *in extent* for thrice the number of years for which the rent remained in arrear, and that he should have power to lease or grant all or any part thereof to any persons qualified to take up land under the conditions of plantation, for such number of years as aforesaid, or for any shorter time &c. the said order to stand in force until some future Assembly should prescribe a different course to be taken for his lordship's satisfaction."

LIBER No. 1. folio 254. —

In Liber No. 4, (folio 534) is a full return of proceedings under a writ of this kind on a deceased person's estate including a sale by *outcry*, and a lease under the privy seal to the purchaser in extent. It appears that, under an order of the provincial court, a kind of a jury of twelve men, consisting of the creditors of the deceased, was summoned, who valued or appraised the land in question to 145 pounds of tobacco yearly, stating that, at that rate extended, it would in ninety-nine years make up the sum of 14355 pounds of tobacco ; and desiring that Thomas Prescott, doubtless one of the creditors and appraisers, might have the *refusal* thereof : upon return of this appraisement, one of the creditors suggested that the land was valued at too low a rate, for which reason, the court, to satisfy all parties, directed it to be sold at outcry. Whereupon proclamation was immediately made by the sheriff that the land belonging to capt. Lewis, at Nanjemoy deceased, was *extended*, and appraised at fourteen thousand three hundred and fifty-five pounds of tobacco for ninety-nine years, and that if any one would give more he was then to appear and so declare ; but no person appearing, the land was awarded to Prescott upon his giving security for the payment of the abovementioned quantity of tobacco, to be divided among the creditors in proportion to the amount of their respective claims, exhibited and allowed ; and it was ordered that the proprietary's secretary should, on his lordship's behalf, pass a grant to the said Prescott of the land aforesaid, agreeably to the certificate remaining in the office, and upon the rent originally reserved, for the term of ninety-nine years, with warranty against any former grant, extent, mortgage, jointure, dower, or other claim or incumbrance whatsoever ; which grant or lease, though only under the privy seal (meaning the secretary's seal of office) was executed accordingly.

CHAPTER XIV.

OF LEASES.

IT will be recollected that the proprietary was enabled by his charter to " assign, alien, grant, demise or enfeoff" lands " in fee simple or fee tail, or for term of life, lives, *or years*." His grants, passed in the land office, under the great seal of the province, were, in general, of a fee simple estate of inheritance with a reserved quit-rent, which constituted the patentees his *tenants*, and so they were invariably called. But as the vast quantity of land retained for his use, in manors and reserves, could not be cultivated on his own account, and as those lands were more likely to be improved than injured by clearing and cultivation, it was the policy of the proprietary to let them out by leases for terms of years, and various instructions and regulations occur upon that subject some of which appear in the documents already inserted. As this was a business with which the land office had in general not much to do, it is not necessary to be very particular about the forms attending it; but, as the lands which were found under lease at the time of our revolution became the object of distinct provisions in the succeeding acts of assembly, it has appeared requisite to take some notice of the subject of leases before we close our account of the ancient practice.

The early leases appear to have been given, like perpetual grants, under the great seal, and were called *lease patents*.—The following extracts and references will shew the form, and general substance of these instruments.

—

" CECILIUS, &c. *To all persons, &c.*

" Know ye that we for divers good causes and considerations us thereunto especially moving, and for the rents and covenants hereafter in this lease expressed, have demised sett, and to farm lett unto (John Bogue, now or late of the Resurrection manor, in Calvert county,) all that parcel of land, part of our manor of Patuxent, in the county aforesaid, beginning, &c. containing 500 acres, to have and to hold the same unto him the said John Bogue and his assigns, to the full end and term of eleven years, from the day of the date hereof to be compleat and ended. Yielding and paying therefore yearly unto us, &c. the rent of ten shillings sterling, &c. Provided that the said John Bogue, his heirs, executors, administrators or assigns, do within one year next ensuing the

date hereof, upon the land leased, plant one hundred apple and pear trees, and them so planted sufficiently fence in and tend—Provided also, that the said John Bogue do now immediately seat the said land and build thereon, and give in sufficient security to our treasury, that during his term, he will sufficiently keep fenced, and at the end and expiration of the term of eleven years, he will leave the orchard so to be planted and fenced as aforesaid in sufficient repair, as also all houses, buildings and edifices by him to be made or built upon the premisses.—Given at Saint Mary's under our great seal, &c. anno domini, 1661."

LIBER, No. 4, fol. 602.

—

" Lease to James Kennedy, for 21 years of part of the manor of Patuxent, already improved, called The Farme, for the rent of four shillings sterling, and upon condition that he shall sufficiently fence in and keep in good repair the orchard already planted upon the said messuage or tenement."

LIBER, No. 4, fol. 603.

—

" Lease to William Smith, for 31 years, of three acres of land called Smith's Town House, for the rent of one bushel of wheat, and on the condition that the said Smith, his executors or assigns, shall never leave the land so deserted, that there shall not be sufficient goods and chattels thereon to pay the said rent, on penalty of forfeiting his lease; and the further condition of his planting within the first year, forty apple or pear trees, and the trees so planted, sufficiently to fence and tend, &c."

LIBER, No. 10, fol. 350.

—

" Lease to the same for 5 years of the mansion house at Saint Mary's, with the orchard garden, &c. thereto belonging, for the annual rent of " a couple of good pullets"—with liberty to the said Smith or his assigns from time to time, before the expiration of his lease to renew the same for further terms of five or seven years."

—

" Thomas Gerard by his petition sets forth, that he had purchased of his father Thomas Gerard, since deceased, a tract of land called the Meadows, for which his said father had obtained a patent; which land, upon a supposition of its having been formerly *reserved*, his lordship had thought proper to lease for years to a certain Joshua Doyne, to the great hardship and detriment of the petitioner:—He prays that as both his father and himself were ignorant of the said lands being reserved, he may not be deprived of his pro-

perty, but that his lordship would bestow it upon him, &c. to which the proprietary gives the following answer—

" If the petitioner, Mr. Thomas Gerrard will think it a " kindness to have the inheritance of the land mentioned in " his petition granted unto him after the expiration of the " lease by which Joshua Doyne at this present holds the " same, I am willing to let him have it, but upon no other " terms I can as yett grant it."

" The petitioner accepts the proprietary's offer and prays that his lordship would have such a patent drawn for his signature before his departure for England—to be passed under the great seal in his lordship's absence—which is also granted."

" Commn. to coll. George Talbott, to lett any part of his lordp's. two manors in Cecil county.
March 19th, 1683.

" *Charles, &c. To George Talbott, Esq. Greeting:*

" Whereas it hath been always our intent to strengthen and fortify the northen parts of this our province of Maryland, the better to enable the inhabitants thereof to resist the invasion and outrages of the northern Indians : And whereas wee have two manors in New Ireland, in Cecil county, each called Baltemore mannor, lying between Elk river, and the North East (als Shennon) river, which if well seated would conduce much to the strength and conveniency of the neighbourhood thereabouts ; Wee Doe therefore hereby authorise you to lay out in each of our said mannors, two hundred acres for demesnes, and to grant warrants of survey on all the rest to such persons as shall intend immediately to seate upon the same ; (noe warrant to exceed two hundred acres ;) And we doe hereby promise to all such takers up of lands in our said mannors, that they shall at their election have leases of one and thirty years, or three lives granted them, at the yearly rent of one hundred pounds of tobacco, or one barrill of corne, or shall have firm grants to them and their heirs for ever, at the yearly rent of two hundred pounds of tobacco, per hundred acres ; and wee doe hereby also authorise you the said George Talbott to signe, seale and deliver in our name leases of tenements for one and thirty years, or three lives, at the yearly rent of one hundred pounds of tobacco, or one barrill of corne, per hundred acres, within our said mannors, to all persons demanding the same : as also to signe, seale and deliver in our name to all persons who shall desire the same, and to their heirs and assignes for ever, firme conveyances of tenements not exceeding two hundred acres in each tenement. To be held of us and our heirs and successors, as of the mannor wherein they lye and whereof they are part, by fealty, suite of court

and the yearly rent of two hundred pounds of tobacco, per hundred acres, hereby ratifying, confirming and allowing what you shall act pursuant hereunto as our own act and deed. To have, hold and enjoy the powers granted you by this commission, with all such fees, benefitts and perquisites as shall grow due to you for executing the same, during our pleasure and noe longer. Given under our hand and lesser seale at armes, this 19th day of March, 1683."

LIBER R. R. R. fol. 71.

Without pretending, to exhibit all the instructions given from time to time on this subject, I shall observe that it became by degrees the general system of the successive proprietaries, to let out their manors and reserved lands on leases, as well for lives as for years, until it was at length thought expedient to make sale of them, for which purpose several orders and commissions were issued in the latter period of the proprietary government, and in particular a commission from Frederick lord Baltimore, to Horatio Sharpe, Daniel Dulany, and John Morton Jordan, Esquires, bearing date in January 1766, under which and the instructions accompanying and following them some sales were effected. A great quantity of lands, however, remained on lease, and the plan of disposing entirely of the manors and reserves seems to have been laid aside, as, many leases were renewed, and I believe new ones granted, subsequent to the beforementioned instructions.—The instruments of lease were ulteriorly, not executed or recorded in the land office. The business of leases was under the direction of the governor and the receiver general, assisted by the stewards of the manors and reserves, whose duty it was to keep the last mentioned officer informed of all occurrences affecting his lordship's interest within their spheres of inspection. Such further notice as this subject may require, will appear in our account of the proprietary's revenue system, to which, in fact, it properly belongs.

CHAPTER XV.

FURTHER CONDITIONS OF PLANTATION, INSTRUCTIONS, ORDERS, &c.

ALTHOUGH the examination of proclamation and surplus warrants led us in some degree into the third period of the proprietary government, it was necessary to notice those matters, (general in point of time) which form the subjects of the three last chapters, before we proceeded to exhibit the main body of the documents belonging to that period. There will, even after the insertion of these, remain various matters to be discussed and illustrated, which are not particular to either of the three periods into which, for the sake of lief and distinction in so blended and confused an enquiry, I have considered the æra of the provincial government as being divided. Here, however, appears to be the proper place for the third collection of instructions, and other important papers found on record ; they will not reach entirely to the time of our revolution, as there are some others which will come in more properly after we have noticed the revenue system of the proprietary, and, in particular, the erection of a *Board of Revenue*, by which some of the latest instructions were issued. But although the documents now to be inserted may anticipate some matters of recital and remark yet to appear, the judgment of the reader will easily direct him as to their proper application. This collection begins with the commission to Charles Carroll, Esq. which gave such umbrage to governor Hart, although I do not perceive that it contains any thing absolutely new, for, the office of chief escheator, of which the governor particularly complained, as being an office of record, had before that time been vested as well in the surveyor general as in the proprietary's agent, and the management and (*a*) receipt of the tobacco and tonnage duties had also been formerly among the chief agent's authorities. I am not certain, considering the violent outcries of Mr. Hart about the powers conferred on Mr. Carroll that the last mentioned gentlemen did not obtain a commission still more extensive than this, but no other is found on record, and the disappointment of the governor, and those of his party, at finding that Mr. Carroll was to continue in the confidence of the new proprietary, was sufficient to raise objections a-

(*a*) This was also complained of, and especially because the receipt of Mr. Carrol comprehended what was destined to the purchase of arms and ammunition !

gainst even the customary authorities of an agent. But there is, after all, no doubt that Mr. Hart, who appears to have been of a character as free from disguise as void of indulgence, was very sincere in his condemnation of the system of vesting any powers that approached to matters of government in an officer under the description of an *agent*, the tenor of whose commission and instructions was not always known to the public, and who, as an officer, was amenable only to the proprietary himself; and there is as little doubt, that his opinion, though accompanied in this instance by undue jealousies and resentments, was, in the abstract, perfectly just.

Concerning the other documents here inserted, I shall only observe that as they are too various in their kinds to be arranged under collective descriptions, I have consulted no order but that of their dates.

" CHARLES,

" Absolute lord and proprietary of the provinces of Maryland and Avalon, lord baron of Baltimore, in the kingdom of Ireland, a minor, and Francis lord Guilford, guardian to the said lord Baltimore, for and on his behalf: To all persons to whom these presents shall come, greeting, in our Lord God everlasting; know ye, that we, reposing special trust and confidence in the capacity, knowledge, care, dilligence and circumspection of Charles Carroll, of our said province of Maryland, Esquire, have made, constituted, ordained, authorized and appointed, and by these presents we do make, constitute, ordain, authorize and appoint him the said Charles Carroll to be our chief agent, escheator, naval officer and receiver-general of all our rents, arrears of rents, fines, forfeitures, tobaccos or monies for land warrants, of all ferrys, waifes, strays, and deodands of all duties arising from or growing due upon exportation of tobacco aforesaid, tunnage of ships, and all other monies, tobaccos, or other effects in any manner or ways now due or hereafter to grow due, whether by protested bills of exchange, or otherwise, to us within the said province; hereby granting to the said Charles Carroll full power and authority to sell and dispose of all lands, tenements, or hereditaments to us now escheated, or hereafter to be escheated or forfeited, to such person or persons as shall agree and pay for them such reasonable rates in money as shall be agreed for: also to inspect into, order, manage and account for all and every other branch or branches of our revenue, within our said province, whether the same be or grow due by particular contract, conditions of plantations, act or acts of assembly, or by virtue of our royalties, rights, privileges and prerogatives within the said province, and for the better and more effectual execution of the said powers and

authorities hereby granted, we do further authorize him to empower, constitute and appoint under him, such and so many officers and deputies as shall be requisite, and has been usual heretofore in like cases, hereby ordering and requiring him the said Charles Carroll to remit unto us, for our proper use, by the first and safest opportunities and conveyancies, all such moneys, effects and bills of exchange, as shall arise, grow due, and be received by him and his deputies or under officers, on all or any the aforesaid branches of our revenue, and upon receipt of any money, bills of exchange, or other effects, sufficient discharges and acquitances, to give and sign to the person or persons concerned or owing such monies, effects and bills of exchange, and generally to act, do, and perform, fulfill and accomplish all and every other act and acts, thing and things, requisite and necessary for the due execution, performance and justly discharging the several respective offices, powers and authorities hereby given and granted him, or intended to be given and granted him.

And we do hereby ratify, confirm and hold for good, effectual and valid, whatsoever the said Charles Carroll shall lawfully do or cause to be done in the premises, notwithstanding any insufficiency or defect in the words, expressions, clauses or sentences of this our commission, and although every particular matter strictly requisite be not therein particularly mentioned and expressed. And we do further hereby for a compensation, salary and encouragement to the said Charles Carroll, for the punctual, sincere and faithful performance of the powers and authorities hereby granted him, and in consideration of the pains, labour and trouble he shall take in the due execution thereof, authorize, direct and empower him to take, receive, and retain, to and for his own use out of all such monies, tobaccos, or other effects, as shall be received on any of the accounts aforesaid (except for the duties arising by the exportation of tobacco, being two shillings and nine pence per hogshead, and the duties arising per the tunnage on ships, being fourteen pence per tun) the sum of ten pounds in the hundred, and so pro rato, for a greater or lesser quantity, (over and above the salaries so as aforesaid to be allowed his officers) and for receiving and remitting the said two and nine pence per hogshead, and fourteen pence per tun, the sum of one hundred pounds sterling yearly. And we do hereby revoke, annul, and make void, all former and other commissions, powers and authorities, touching the premises, by us, or our authorities, to any person or persons heretofore granted, ratifying and confirming all whatsoever has been lawfully done by the said Charles Carroll, by virtue of my late lord Benedict's letter to him, as far as in us lies; as also

what after his death he has lawfully done by virtue of our letter to him: And this our commission, and the powers hereby granted, to continue in force during our pleasure, and no longer. In witness whereof we have hereunto set our hands and greater seal of our said province. Dated at London, this twenty-fourth day of March, in the year of our Lord seventeen hundred and fifteen.

BALTIMORE.
GUILFORD.

Intrato in officio, secretar
customar, decimo sexto, die Aprilis, 1716.
JNO. MANLEY."

THE GREAT SEAL.

LIBER T. P. No. 4. folio 282: Office of the court of Appeals for the Western Shore.

"Orders and instructions, powers and authorities to be observed and pursued by Thomas Beake and Charles Lowe, our secretaries of the province of Maryland, or by their sufficient deputy. Given by us, this 16th day of November, one thousand seven hundred and seventeen.

"You are hereby impowered and directed, by yourselves or your deputy, to grant warrants for taking up any waste, cultivated, uncultivated, or surplus lands within the said province, and grant the same lands to such person as shall obtain such warrants, and their heirs and assigns, according to the conditions of plantations following, or which shall hereafter be by us declared within our said province; hereby giving you full power to finish such grants according to the usual form, so as to make out the grantees an estate in fee simple to the lands specified in such grants, you taking to yourselves all legal fees due to you for so doing, and accounting to our chancellor for the whole fee due to him for affixing the great seal to the said grants.

"2d. You are to reserve upon every hundred acres of land so granted, the usual annual sum in money as has been lately accustomed to be reserved.

"3d. For every hundred acres of land so to be granted, our receiver general, for the time being, is to receive for our use, as a fine, the sum of forty shillings, sterling money, or take caution for it, and when he has so done, you are to proceed to make out the patent for the same, and not before."

LIBER, T. P. No. 4. folio 486: Office of the court of Appeals for the Western Shore.

" Philemon Lloyd, Esq. deputy secretary of this his lordship's province of Maryland, to *Edward Griffith*, sends greeting. Whereas the honorable Thomas Beake and Charles Lowe, Esquires, his lordship's principal secretarys of the said province, by their certain deputation under their hands and seals bearing date the thirty-first day of May, anno. domi. seventeen hundred and fifteen, have nominated and ordained, constituted and appointed me the said Philemon Lloyd, to be their true and sufficient deputy and to execute and exercise the said office of secretary of the said province in as large and ample a manner as the said Thomas Beake and Charles Lowe, by virtue of their letters patent or grant for the same office might or could do, as by the same instrument of deputation remaining upon record in the said secretary's office, may more at large appear; Know ye that for the especial trust and confidence I have and do repose in the knowledge, care, and circumspection of the said Edward Griffith, have ordained, constituted, and appointed, and do by these presents ordain, constitute and appoint you the said Edward Griffith, to be register and keeper of the land records of the province of Maryland: willing and requiring you to ask, demand, and receive, and into your custody to take all books, records, transcripts, papers, and inrollments whatsoever, now in the possession of Charles Carroll, Esq. unto the said office belonging, or in any wise appertaining, and to act, do and perform in the aforesaid office as register as fully and amply as any register of that office may or ought of right to do, To have, hold, exercise and enjoy the office aforesaid, during pleasure. Given under my hand and seal, this thirteenth day of June, in the second year of his lordship's dominion, &c. Annoq. Domi. 1717."

LIBER B. B. fol. 49.

" Orders and instructions, power and authorities to be observed and persued by Thomas Beake and Charles Lowe, our secretarys of the province of Maryland, and in their absence out of the said province by Philemon Lloyd their deputy.

" Given by me in London, this 12th day of March, 1721.

C. BALTIMORE.

" Whereas the power of granting warrants for taking up waiste cultivated, uncultivated and surplus lands and the finishing such warrants by making the grantees an estate of fee simple, does now chiefly center in you the said Philemon Lloyd, (except the receiveing the money due for such grants, which by our former instructions my receiver generall for the time being is to doe,) so the hearing and determining defer-

ences arising between contending parties in land affairs hitherto used to be heard and determined in the office commonly called the land office, must naturally fall under your cognizance ; and I do hereby empower you the said Philemon Lloyd to judge and determine in the said affairs as far as legally you may according to right, reason and good conscience."

LIBER P. L. No. 5, 364. Office of court of appeals, Western Shore.

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C. BALTIMORE.

****** SEAL ****** "Additional orders and instructions, powers and authoritys to be observed and pursued by Philemon Lloyd, Esq. deputy secretary of our province of Maryland.

"Given by us att London, this 19th day of March, anno domini, 1722."

"1st. On consideration of Richard Tilghman, Esq. his petition and your opinion thereon for supplying the defect and omission of the date of the land warrant for seventeen hundred acres of land called Adventure, lying in Talbot county, formerly laid out for colonel Vincent Lowe, mentioned in the certificate of William Bishop, deputy surveyor of the said county on record, I have thought fit that the same should be rectified, and do hereby empower and direct you forthwith to amend and supply the said defect and omission, according to the useage heretofore practised in the like cases, and that you grant the said Richard Tilghman a patent for the said lands, so that the legall estate may be vested in him."

"2. In case you take out any warrants yourself and grants of any lands, thereupon it being not proper you should signe and seal such warrants and grants yourself, Daniel Dulany, my attorney general, and Nicholas Lowe, my agent, are hereby empowered to signe and seal such warrants and grants. C. B."

LIBER C. C. 148.

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C. BALTEMORE.

****** SEAL ****** "Additional Orders and instructions, powers and authoritys to be observed and pursued by Philemon Lloyd, Esq. our deputy secretary of our province of Maryland.

"Given by us at London, this twenty-first day of November, anno dom. 1724."

"1st. You are hereby ordered, directed and empowered to grant unto Mr. James Carroll, five thousand eight hun-

dred acres of common warrant land, and to make out his patent for the same, under the usuall quitt rents and other conditions. But he is to pay me no fine, it being a reward bestowed on him (in addition to the the 4,200 acres formerly given him) for his labour and pains in keeping and making out my rent rolls, with which you are to acquaint my agent Mr. Nicholas Lowe, that he may require nothing from him for the same.

" 2. Whereas you have located for me a new mannour upon Potomack, containing about 10,000 acres, I am well pleased therewith and would have you do every thing accessary to compleat the same, and being willing in some measure to reward your services in conjunction with those of my secratary Mr. Charles Lowe, I have thought fit to grant your request ; and do hereby order and direct and empower you to make out a grant and patent yourself and the said Charles Lowe of the ten thousand acres of land you have laid out between you, upon Potomack, under the usual annual quit rent, and other conditions, without paying any fine for the same, with which you are to acquaint my agent Mr. Nicholas Lowe, that he may require nothing for the same.

" 3. Major Sewell having desired of me a grant for a certain parcell of land, containing about four hundred acres heretofore taken up in partnership by Mr. Henry Sewell (the major's father) with one Vanhoof (an alien) who is since dead, without any body claiming for or under him, I am willing to grant his request, which you are hereby ordered, directed and empowered to make good to him in the most effectual manner as far as I have any right therein, without his paying any thing as a fine to me for the same, with which you are likewise to acquaint my agent Mr. Nicholas Lowe, that he may require nothing of him."

C. B."

LIBER, C. C. 420.

" *By the Governour and Council.*

" 16th of June, 1730.

" Forasmuch as it is represented to this board, that several persons have attempted to procure warrants and to take up lands heretofore supposed to be mannor lands, and likewise lands already leased or otherwise reserved for his lordship's use.

" It is the opinion of this board that such lands ought not to be taken up by any persons whatsoever ; But be and remain to his lordship as land reserved for his own use, although not contained within the bounds of any of his lordship's mannors.

" It is therefore ordered, that no person or persons be permitted to survey or take up any such lands, and that a clause be inserted in all warrants issuing out of the land office for the future restraining the surveyors from laying out any such land for any person whatsoever.

" And it is likewise ordered, that no warrant be located upon lands reserved or appropriated to the use of the Indians.

JNO. ROSS, Clk. Counc.

" SIR,

" You are hereby required to enter the above order in the records in the land office, for the better information of all persons concerned therein.

Signed per order,

JNO. ROSS, Clk. Counc."

" *To the hon'ble Philemon Lloyd, Esq.*"

LIBER, E. E. fol. 64.

" MARYLAND, *ss.*

" BALTIMORE.

" *By the right honourable Charles, absolute lord and proprietary of the provinces of Maryland and Avalon, lord baron of Baltimore, &c.*

" Wee being desirous to increase the number of honest people within our province of Maryland, and willing to give suitable encouragement to such to come and reside therein, do offer the following terms :

" 1st. That any person having a family, who shall within three years come and actually settle, with his or her family, on any of the back lands on the northern or western boundarys of our said province, not already taken up, between the rivers Potomack and Susquehanna, where we are informed there are several large bodies of fertile lands, fit for tillage, which may be seen without any expence, two hundred acres of the said lands, in fee simple, without paying any part of the forty shillings sterling, for every hundred acres, payable to us by the conditions of plantations, and without paying any quit rents in three years after the first settlement, and then paying four shillings sterling for every hundred of acres, to us, or our heirs, for every year after the expiration of the said three years.

" 2d. To allow to each single person, male or female, not above the age of thirty, and not under fifteen, one hundred acres of the said lands, upon the same terms as mentioned in the preceding article.

" 3d. That we will concur in any reasonable method that shall be proposed for the ease of such new comers, in the pay-

ment of their taxes for some years ; and we doe assure all such that they shall be as well secured in their liberty and property, in Maryland, as any of his majesty's subjects in any part of the British plantations, in America, without exception ; and to the end all persons desirous to come into and reside in Maryland, may be assured that these terms will be justly and punctually performed on our part. Wee have hereunto sett our hand and seal at arms, at Annapolis ; this second day of March, Annoq. Domini, 1732.

J. ROSS, Cl. Cou'l."

GREAT SEAL.

COUNCIL PROCEEDINGS, commenc'g 1728, folio 68.

" BALTIMORE.

" CHARLES,

" Absolute lord and proprietary of the provinces of Maryland and Avaion, lord baron of Baltimore, to Edmond Jennings, Esq. greeting : We placeing and having great trust and confidence in your integrity and care, do by these presents nominate, appoint and authorize you the said Edmond Jennings our judge and register, in and of our land office, in the said province, with full power and authority to act, hear, judge and determine in our said land affairs and office, *according to right reason and good conscience*, and the several instructions and orders which you shall from time to time receive from us, relating thereto ; and we do hereby further impower and authorize you the said Edmond Jennings, to have and receive to your own benefit and advantage, all such fees and perquisites belonging to the said office, as we shall from time to time ascertain and limitt ; to have and to hold the said office, and receive and take the said fees and perquisites, to you the said Edmond Jennings, dureing our will and pleasure. Given at the city of Annapolis, this twentyeth day of March, in the eighteenth year of our dominion over the said province, Annoq. Dom. one thousand seven hundred and thirty-two.

SIG. MAG. APPEND.

J. ROSS, Cl. Cou."

LIBER, E. E. folio 298.

" BALTIMORE.

(L.S.) " Orders and instructions to our trusty and well beloved Edmond Jennings, Esq. secretary and judge of our land office, in the province of Maryland.

" 1st. No lands shall be hereafter granted upon any new warrant hereafter to be issued, under reservation of a lesser rent than ten shillings sterling for every hundred acres, unless our chancellor, together with you our judge in our land office, shall for any particular lands on the frontiers or borders of our province, think a less rent more reasonable, in which cases such lands may be granted for such less rent as to our said chancellor and yourselfe shall seem proper.

" 2dly. In all disputes which shall come before you, as judge in our said office, you shall be assisted in the determination thereof by our chancellor for the time being.

" 3dly. You shall not permit any warrant to issue, or other act or thing to be done in your office, which may entitle any person to any lands within this our province, until our gent. together with our chancellor, shall have certified under their hands, that the money due to us for the caution, or for the warrant or lands have been paid.

" 4thly. No grants or pattents shall pass for any lands, hereafter to be granted unto the governor, chancellor, secretary, commissary, judge of the land office, agent or atttorney general, or to themselves, wives or children, untill our leave and pleasure shall be first had and obtained therein. But it is our will and pleasure, that the governor, chancellor, secretary, commissary, judge of the land office, agent, or attorney general, or their wives and children, may, by a warrant and a location thereof, and a survey under the same, intitle themselves to the preference of lands liable to be granted, untill our said pleasure shall be had therein, as aforesaid.

" 5thly. In all affairs in our said land office, which may relate to yourselfe, wife or own children, the chancellor shall determine and direct the same, and shall also instead of yourselfe, sign what may relate thereto.

" 6th. You shall keep authentick records of all your proceedings.

" 7th. You shall not suffer takers up of land to string the same, but oblidge to make their surveys as little indented as possible.

" 8th. You are to return yearly to the keeper or keepers of the rent roll, for the time being, an abstract of all the lands upon comon warrants, held by certificates upon record, and also what certificates are recorded upon warrants of resurvey, and in the abstract of such, to mention the names of the original tracts included in such resurvey; and if any certificates

are recorded upon warrants of escheat, you are likewise to sett down in the abstracts of them the name of the original tracts so become escheat.

" 9th. You, as secretary, shall take care to give the clerks of the county's, directions to be very exact in transmitting to our agent the alienations every year.

" 10th. Whereas we have condescended that those persons who are intituled to any lands within our manor of Severn, on the north side of Severn river, in Ann Arundell county, by any former survey or pattent, should have original pattents, or pattents of confirmation for the same : therefore, our will and pleasure is, that proper pattents issue to such persons as shall apply for the same, within the space of one year next ensuing, under the same annual rent for every hundred acres, which was payable for lands at the time of the original survey of such lands. Provided, that no pattent to be granted by virtue of this instruction, shall contain or include more land than the express number of acres mentioned in the original survey or pattent, and which said number of acres shall be included within bounds to be ascertained by a resurvey, if necessary, of such lands, prior to the pattent hereby directed to be granted.

" 11th. There shall be in all future comon warrants, a clause, inserted by proviso, that the pattent shall be taken out within the space of two years after the date of such warrant, and which said clause you are hereby injoyned so strictly to observe, as not to suffer any renewal of the said warrants, after such time, or any pattents to issue contrary to the true intent and meaning thereof.

" 12th. As soon as notice shall be given unto you, that there is surplusage contained in any former or future surveys, for which the owners of such surveys have not made the proper application, pursuant to our proclamation, dated the fourteenth of June, seventeen hundred and thirty-three, you shall inform our attorney general thereof, in order that he may proceed to make void the pattent, and upon a judgement or a decree for vacating the same, your are hereby directed, upon application in behalfe of such pattentee, to grant a warrant to resurvey so many acres of the said land, as were mentioned in the said pattent so vacated, and to issue a pattent for the same to the person who was intitled to the said first patent, and you are to grant the surplusage to any other person than the owner applying for the same, under the conditions and terms of four shillings sterling rent, and the other conditions established by these instructions, and upon the payment or security of such caution money, as to our chancellor and agent shall seem proper.

"13th. There shall also be in all grants or pattents hereafter to be granted on all future original comon warrants, or on warrants for escheat lands, or on warrants for surplusage lands, or on other special warrants, a clause, or provisoe, inserted that the same grants or pattents shall become void, on non-payment of the rent reserved.

"14th. And to incourage the discovery of escheat lands or houses, it is our will and pleasure, that one third part of the value or worth which shall be sett on such lands or houses, shall be allowed to any person who shall discover the same, in the composition or purchase money which he ought to pay for the same, and that such discoverer shall have, without exception, the preference and preemption.

"15th. You shall not permit any pattents to issue on any comon warrants now issued, or certificates returned on such warrants after the fourteenth of June, seventeen hundred and thirty-four, next ensuing the date of a proclamation to be published for this purpose.

"16th. You shall pursue all former instructions, so far as they are not repugnant to these.

"17th. You shall, with advise of our chancellor, cause proclamations to be published from time to time, of such part of these our instructions as may be necessary.

"18th. In all grants or patents hereafter to be granted, on future warants, there shall be a clause reserveing one tenth part of all mines, other than royal mines excepted, by such receivers at the pitt's mouth, that is, when raised.

"19th. That no caveat be permitted to be renewed, after the expiration of six months.

"Given under our hand and seal, at Annapolis, this fourteenth day of June, in the nineteenth year of our dominion, Annoq. Domini, 1733.

By his lordship's comand,

WILLIAM JANSSEN.

LIBER, E. E. folio 306.

"BALTIMORE.

****** SEAL ****** *Orders and instructions to our trusty and well beloved Samuel Ogle, Esq. governor and commander in chief of the province of Maryland.*

1. You shall call our council, and make known to them your commission and qualifie yourself accordingly.

2ndly. You shall as chancellor be aiding and assisting to our agent, and judge of our land office, in all that relates to their respective offices, and sign all proceedings relative thereto.

3dly. You shall farm, if you think fit, for my service, my quit rents of the whole province at the rate of twenty to twen-

ty-five per cent discount, taking such security as my agent and attorney general for the time being shall approve of, obliging the farmers to make returns or rent rolls yearly, to my general rent roll keepers of the respective shoars, as you with the advice aforesaid shall think proper.

" 4thly. My general rent roll keepers to be by you appointed, shall be two, one on the Western, the other on the Eastern shoar, for which they shall be allowed five per cent on the amount of the rent of the respective shoar, if farmed; if collected, on so much as is and shall be collected within the year, which general rent roll keepers, you are directed to inspect with our agent for the time being, and to give such directions for the regulation of the same, as you and the agent shall think expedient for the better keeping and complying the same.

" 5thly. If you shall judge it more for my service you shall appoint receivers of my rents in each county, allowing them ten per cent. for all they shall receive within the year. You shall take sufficient security from them, and give them such directions as my agent and yourself shall judge for my service.

" 6thly. You shall, with the advice of my agent, lett or lease my manors or reserves, and appoint such stewards or other officers of the same, as shall be thought convenient; and when you have determined on the conditions that each respective manor shall be lett for, you shall make it known to the stewards or other officers thereof, and direct them to inform all persons willing to become tenants thereof, you shall with the advice aforesaid allow such gratuities to the stewards of the manors as shall be thought adequate to their services.

" 7thly. My agent shall sign with you all the leases of the manors aforesaid, or other acts and deeds relative to his office, and take to himself such perquisites as have heretofore belonged to him, until my pleasure to the contrary.

" 8thly. Our judge of our land office shall take all such fees to himself as usual until our pleasure to the contrary be known.

Given under our hand and seal at Annapolis this eighteenth day of June in the nineteenth year of our dominion, Annoq. Domini 1733.

By his lordship's command,

WM. JANSSEN."

COUNCIL PROCEEDINGS, commencing 1728.

" BALTIMORE.

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* SEAL *
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" *A further instruction to Edmund Jennings, Esq. judge of our land office in our province of Maryland.*

" Whereas, it has been doubted whether by our late settlement of fees and the allowance therein of a fee on every petition, a fee may be taken on every petition for entering a caveat, or for other purposes or matters in our said land affairs besides the fees on petitions for special warrants. It is our will and pleasure that the judge in our said land office, shall and may be permitted to take and receive on every petition, either for entring caveats or other matters in our said land office, the same fee, as is allowed by our said late settlement. Given under our hand and seal at London, this 26th day of May, 1735. C. B."

LIBER, F. F. folio 53.

" *Copy of his lordship's *first instru*con, *dated at London*, 15th *December*, 1738.

" We do authorise and impower you, with the advice and consent of our governor and secretary for the time being to grant any surplus or other lands, our mannors or reserves excepted, on such terms and conditions as to you shall seem equitable and just, tho' not under the conditions of four shillings reserved rents, and five pounds sterling caution money per hundred acres. You are nevertheless to demand, where you judge the case will admit of it, such further caution money and reserved rent, as to you the governor and secretary for the time being shall seem just and expedient."

COPY. BENJAMIN TASKER."

LIBER L. G. No. A. folio 135.

" *Annapolis, 2d July*, 1739.

" By virtue of an instruction from the right honourable the lord proprietary, bearing date the 15th day of December, in the year of Lord 1738, to reserve for his lordship's use all vacant and escheat land, being in Annapolis or within the distance of five miles thereof, or of any part thereof, I hereby desire that entry be made of this reserve and the greatest care taken to prevent any survey being made within the same, either by expressly mentioning the reserve in all warrants to be issued out of the office, or in such other manner as may make the same known and remove all pretence of ignorance. I am, Sir,

Your most humble servant,

BENJA. TASKER."

" *To collo. Gale, judge of the land office.*"

LIBER, L. G. No. A. fol. 64.

* Presumed to be the first instruction received by Mr. Tasker as agent.

" July 2d, 1739.

" Pursuant to the above order a reserve is hereby made on all vacant and escheat land, being in Annapolis, or within the distance of five miles thereof or any part thereof, for the use of the right honourable the lord proprietary of which the surveyor of Anne Arundel county is to take notice and demeane himself accordingly.

LEVIN GALE."

LIBER, L. G. No. A. fol. 64.

—

" C. BALTIMORE.

" *An instruction to our trusty and well beloved Samuel Ogle, Esq. Governor of the province of Maryland.*

" Whereas by our proclamation, bearing date at Annapolis, the 20th of June, in the 19th year of our dominion, anno domini 1733, We thought fit to publish and declare, that the rent of four shillings sterling, as usual for every hundred acres of surplusage land thereafter to be granted should be reserved and payable ;

" And whereas it has been represented to us that great part of the best and richest land is now taken up, and that most of what remains is of less value, or lies in small quantities, and being willing to shew our good tenants all reasonable favour and indulgence, we hereby impower you to grant all surplus land in our province, whereon no patents of confirmation have already issued upon the like terms, conditions and reservation of rent as mentioned in the original grants or patents for such land, the parties applying first compounding with our agent for the purchase money, interest thereon, and rent from the date of the original grant, for such surplus land.

C. B.

" Given at London, this 12th day of August, in the 27th year of our dominion, anno domini, under our hand and lesser seal at arms, 1741.

By his lordship's order,

JN. BROWNING, Secretary."

COUNCIL PROCEEDINGS, commencing 1738, fol. 143.

—

" Whereas I have received his lordship's instructions, bearing date at London the 26th day of May, anno domini 1735, directing that Mr. John Diggs of Prince Georges county, should have a warrant for five thousand acres of land, to be laid out upon the remote parts and borders of this province, upon his giving security for the payment of the caution money, within the term of five years and complying with the other requisites mentioned in the said instruction ;

And whereas I have received a bond from the said John Diggs, with Arnold Livers of Prince Georges county aforesaid, security conditioned for the payment of one hundred pounds sterling, within the term of five years, being the consideration money at the date of the said instructions, taken for the quantity of five thousand acres of land, warrant may therefore issue unto him the said John Diggs, for the aforesaid quantity of five thousand acres, with his excellency's approbation.

" 30th July, 1740. Approved, by SAM. OGLE."
BENJ. TASKER.

" *To the chief clerk of the land office.*"
LIBER, L. G. No, A. fol. 187.

—

" Whereas warrant issued unto John Diggs of Prince Georges county, for five thousand acres of land, bearing date 23d October, 1740, pursuant to his excellency the governor's and his lordship's agents order, and agreeable to his lordship's instructions, dated at London, the 26th May, 1735, directed to his excellency and Edmund Jennings, Esq. his lordship's then judge in land affairs. And whereas in said instructions a number of familys or inhabitants were particularly to be agreed on and expressed to be settled on the said five thousand acres of land, his excellency the governor orders that entry be made that ten families shall be the number to be settled thereon, agreeable to said instructions." SAM. OGLE."

" November 19th, 1740."

LIBER, L. G. No. A. fol. 192.

—

" 1741, March 19th.

" C. BALTIMORE.

" *An instruction to our trusty and well beloved Samuel Ogle, Esq. Governor of the province of Maryland.*

****** You are to give directions to our judge of the * SEAL * land office that for the future he is not to make ****** out any grant of land or lands, to any person or persons exeeding the number of one thousand acres, and the same thousand acres to be made out in two distinct grants, not exceeding five hundred acres each, with the usual reservations. C. B.

" Given at London, the 2d February 1740, in the twenty-sixth year of our dominion, under our hand and seal.

" By his lordship's order,
JNO. BROWNING, Sec'y."

LIBER L. G. No. 5, fol. 355.

" His excellency is pleased to lay before this board, an instruction from the lord proprietary to him, in the following words :

" You shall at such times, and in such manner as may be " proper and convenient, give directions to our agent, and " the several receivers of our quit-rents, not to insist on or " receive from any person whatsoever, any fine or fines on or " for any lands which have been or shall be alieniated by de- " vise."

" It is the humble advice of this board to his excellency, that he be pleased to order proclamation to issue notifying the same, which proclamation being prepared, is read and approved of, and issued accordingly."

" MARYLAND, *ss.*

" *By his excellency Thomas Bladen, Esq. Governor and commander in chief in and over the province of Maryland,*

" A PROCLAMATION.

" Whereas some uneasiness have arisen concerning the right of his lordship, the lord proprietary, to alienation fines on devises of lands, and that his lordship, desirous to shew his readiness to give his tenants ease and satisfaction, in whatever may be thought reasonable in any degree, though to the diminution of his own strictly legal rights, hath been pleased to direct orders should be given to his agent, and the several receivers of his quit rents, not to insist on or receive from any person whatsoever, any fine or fines on or for any lands which have been or shall be alienated by devise, to the end his lordship's pleasure may be known, and that all persons concerned may have due notice thereof, I have thought fit, by and with the advice of his lordship's council of state, to issue this my proclamation, strictly charging and requiring the several sheriffs of this province to make this my proclamation publick in their respective counties, in the usual manner, that all persons concerned may conform themselves thereto, as they will answer to the contrary at their peril. Given at the city of Annapolis, this 20th day of October, in the 28th year of his lordship's dominion, Annoq. Domini, 1742.

J. ROSS, Cl. Coun."

COUNCIL PROCEEDINGS, commencing 1738.

" MY LORD,

" We beg leave to represent to your lordship, that Coll. Gale, some time before his death, had given directions to the surveyors of the two lower countys, on the Eastern Shore, to lay out lands upon the borders thereof, for any persons that should apply for them, upon their giving bond for

the payment of forty shillings for every hundred acres, caution money, in twelve months after the making the survey, and the bond to be immediately returned into the land office.

" Under these directions great numbers of people have become tenants to your lordship there, and if the same liberty were allowed in the other counties on that shore, there is no doubt but they would do so in them too.

" We humbly apprehend that it would be to your lordship's advantage that they should, and therefore think it our duty to lay the matter before your lordship, and beg that you would be pleased to signify to us your pleasure thereon.

We are, in the greatest respect,
My Lord,
Your lordship's most
Faithful and most
Obedient serv'ts,
BENJA. TASKER.
BENJA. YOUNG.

Annapolis, June 23, 1746."

—

" Give such directions, as to the contents of this letter, as you think proper.

C. BALTIMORE.

" *To Samuell Ogle, Esq.*
Governor of Maryland."

—

" Agreeable to the within order to me, you are hereby desired to order the several surveyors of the Eastern Shore, to lay out, for all persons that apply, lands upon the borders, and to take bond for the payment of the caution money in twelve months, and immediately transmitt the same into your office, and also to order warrants of resurvey there, but suffer no patents to issue thereon till the caution money is paid, which must be in proportion to the original grant.

" And the same orders may be given to the surveyors of Prince George's and Baltimore countys.

SAM: OGLE."

LIBER, P. T. No. 3, folio 272.

N. B. This order is presumed to be addressed to Messrs. Tasker and Young, judges of the land office.

—

November, 1753.

Extract from his lordship's instructions, dated at London, 30th of March, 1753.

" 20. And you are to give directions to our judge of our land office, that for the future, he is not to make out any grant of land or lands, in any of our counties that are well inhabited, to any one person or persons, exceeding the number

of one thousand acres, unless any particular cause should require the same; and the said number of acres is to be made out in distinct grants, not exceeding five hundred acres each.

" 21. Whereas omissions have happened in the land office, by not inserting in some of the grants made out, the word sterling, after the sum reserved for the rent; if any of the grantees should at any time offer to pay currency, instead of sterling, it is my pleasure that you always demand sterling of such grantee.

" 24. You are not to let or grant any lands in the city of Annapolis, or within five miles about the same, without particular instructions from me, and you are forthwith to transmit a copy of the entry or entrys of any reserves laid on that shall be or have been entered in any of the publick offices, agreeable to any instruction from my late dear father to your predecessor, for that purpose.

* EDWD. LLOYD."

LIBER, T. I. No. 6. folio 385.

" 1756, *April* 19*th*.

" In his lordship's additional instructions to Samuel Ogle, " Esq. governour of Maryland, bearing date the 10th day of " August, 1734, among other things was contained the fol- " lowing paragraph, viz.

" I direct you to sell Nanticoake mannor in Talbot county " for the best advantages you can."

LIBER E. E. folio 526.

" April the 14th. Then received the following letter, and recorded by order of the judges.

" *Annapolis, the* 10*th April*, 1764.

" GENTLEMEN,

" The lord proprietary being desirous to have ten thousand acres of land reserved in the western part of Frederick county, for a manor, I have given the surveyor of that county instructions to execute no warrant whatsoever on land lying beyond Fort Cumberland, until the above mentioned quantity is surveyed and laid out for his lordship, of which you will be pleased to take notice, and cause the same to be communicated to any person that may apply for warrants to effect land in that part of the province.

I am, Gentlemen,
Your most h'ble serv't,
HORO. SHARPE."

To the judges of his lordship's land office.

LIBER W. S. No. 7. folio 91.

* The instructions are to Mr. Lloyd, as chief agent, and his name is here for the purpose of certifying the extract.

" F. BALTIMORE.

" Frederick absolute lord and proprietary of the provinces of Maryland and Avalon in America, lord baron of Baltimore, in the kingdom of Ireland—To our trusty and well beloved Horatio Sharpe, lieutenant governor of our said province, the honourable Daniel Dulany, Esq. and John Morton Jordan, Esq.—Send greeting:

" Know ye that, we (taking into our consideration the state and condition of our reserved lands in our said province of Maryland, and being desirous to extend and promote the cultivation and improvement thereof, and for that purpose to grant to the good tenants of our said province, such permanent interests therein as may encourage and invite them to undertake and prosecute the same, to their own emolument and the publick benefit of our said province:) Have given full power and authority to you and the survivors or survivor of you, as we do by these presents, give full power and authority to you and the surviors and survivor of you for us, and in our names, to grant, sell and dispose, or otherwise to treat, contract and agree for the granting, selling and disposing of all or any our said reserved lands or manors in our said province, as well cultivated as uncultivated, to all and every person or persons, who shall be willing to purchase the same for such considerations and prices respectively upon such terms and conditions, and under such rents and reservations, and in such manner and form as by our orders and instructions, under our hand and seal, bearing even date with these presents, are and is in that behalf specified and declared, which orders and instructions we have directed to be entered in the counsel books of our said province, and do declare to be of the same force and validity as if incerted in these presents; and for the purposes aforesaid, We Do hereby authorize and empower you and the survivors and survivor of you to seal, and as our act and deed in due form of law to deliver, all proper deeds, conveyances, assurances, contracts and agreements; also to receive the consideration or purchase money to be thereon paid, and to sign receipts and give acquittances for the money to be so received and paid; which shall be sufficient discharges to the persons paying the same for the money to be so received, and generally to do all such acts which shall or may be requisite and expedient in the premisses, in as full and ample manner, to all intents and purposes as we ourselves might or could do if personally present; and whatsoever you the said Horatio Sharpe, Daniel Dulany and John Morton Jordan, or the survivors or survivor of you shall lawfully do or cause to be done in the premises, during the continuance of these presents, (which we will to be of the space of two years, from the day of the date here-

of and no longer ;) We Do by these presents, and shall and will at all times hereafter, ratify, confirm and allow, to all intents and purposes whatsoever, as we do hereby revoke all powers and authoritys at any time heretofore given by us to you the said Horatio Sharpe and to any other person or persons in our said province, touching or concerning the sale or other disposition of our said reserved lands, or any part thereof, more particularly our orders and instructions given to you the said Horatio Sharpe and to Benedict Calvert and George Steuart, Esquires, the judges of our land office, and to Edward Lloyd, Esquire, the receiver general of our said province, bearing date the day of January, one thousand seven hundred and sixty-five. Given under our hand and lesser seal at arms at London, the twenty-first day of February, in the fifteenth year of our dominion of the said province, and in the year of our Lord one thousand seven hundred and sixty-six."

F. B. (L. S.)

"By his lordship's command,

"HUGH HAMERSLY, Secretary."

LIBER W. S. No. 12, fol. 57.

"Frederick absolute lord and proprietor of the provinces of Maryland and Avalon in America, lord baron of Baltimore, in the kingdom of Ireland—To our trusty and well beloved Horatio Sharpe, Esq. lieutenant governor of our said province, the honourable Daniel Dulany, Esq. and John Morton Jordan, Esq.

"Further instructions to be observed and pursued by you, touching the sale of the reserved lands in our said province, pursuant to our commisson bearing date the twenty-first day of February last past, and instructions of the same date—Whereas in and by the eleventh article of our instructions, bearing date the said twenty-first day of February last past, touching the sale of our said reserved lands, We did direct all purchase deeds or conveyances to be by you made of our said lands, should be by bargain and sale, to be enrolled in our land office, in the particular county where the lands lay, or in our general land office at Annapolis, and that all future alienations of such lands, should be by bargain and sale to be enrolled as aforesaid, and a proper covenant under adequate penaltys taken from the purchasers for that purpose.

"And whereas it has been since represented to us that our usual method of granting lands in our said province, hath been by grant under the great seal of our said province, and that the restriction of all future devivative conveyances

to be made by our tenants of the lands to be so granted to be by bargain and sale only, as well as the mode prescribed by our said instructions for the recording of all conveyances to be made of our said lands, may be attended with inconveniency's, We do therefore hereby revoke the said eleventh article of our said instructions; and instead thereof, Do hereby direct, that all conveyances to be by you made of our said reserved lands, pursuant to our said commission and instructions bearing even date therewith, shall be by grant under the great seal of our said province, and recorded in the proper provincial office; and that you do insert in all such grants a proper clause or clauses requiring all future alienations of the lands to be so granted, to be recorded after the execution thereof respectively, within the time limitted by act of assembly in that behalf, in the case of bargains and sales;—and in case you shall have already made any conveyances of our said reserved lands by such grants under the great seal of our said province, and with such clause or clauses as herein directed, and not by bargain and sale, and with such directions as ordered by our said former instructions.—We do hereby confirm all such grants, so by you made, so far as the same shall conform to these our instructions, and not to be repugnant in any other respect to the tenor of our said former instructions.

"And whereas doubts may arise touching our title to Ann Arundel manor, on account of the devise which our late father Charles lord Baltimore, deceased, took upon him to make of the said manor, to Benedict Calvert, Esq. though his lordship was tenant for life only, of our said province, by the settlement made on his marriage with the lady Baltimore, our mother, and which desire was afterwards defeated upo attaining the age of twenty-one years by exercising the powers in us vested as tenant in tail of the said province; Now to obviate any unnecssary scruples which uninformed purchasers may be induced to entertain of our said title, We do hereby authorise and empower you upon the sale of our said manor, or any the lands thereto belonging to incert in the grants to be thereof respectively made proper engagements and stipulations in our name and behalf, (and which we) do hereby agree to confirm, to warrant the titles of the lands to be so granted against the said Benedict Calvert, his heirs and assigns, and all and every person or persons claiming or to claim under him or them, so as that such warranty be restrained not to extend to any future improvements to be made of the said manor and lands, nor to any rise or encrease in the value thereof, beyond the price or consideration to

be paid for the same, respectively in case of any future eviction.

" Given under our hand and lesser seal at arms, this eighth day of November, in the sixteenth year of our dominion of the said province, and in the year of our Lord one thousand seven hundred and sixty-six.

F. B. (L.S.)

" Countersigned by his lordship's command,
HUGH HAMERSLEYE, Secretary."

LIBER W. S. No. 12, fol. 54.

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" *Annapolis, the 28th of February*, 1767.

" GENTLEMEN,

" In all patents for land that shall be surveyed by virtue of warrants issued after this date, you are to insert a clause of re-entry in case the payment of the quit rent shall at any time be delayed more than thirty days after it becomes due.

" You are not till further instructions from the right honourable the lord proprietary or his lieutenant governor, to grant any warrant for land, lying between the line that was in the year one thousand seven hundred and thirty-nine begun by order of the late lord proprietary and the proprietors of Pennsylvania, and then or afterwards run through Cecil, Baltimore and Frederick counties, and the line which hath been in the years one thousand seven hundred and sixty-five, and one thousand seven hundred and sixty-six, actually described by a visit through the said counties, and which last line is for the future to be the boundary between Pennsylvania and this province.

I am, with all due regard,
Gentlemen
Your very humble servant,
HORO. SHARPE."

" *To the hon'ble Benedict Calvert and George Steuart, Esqrs. judges of the land office.*"

LIBER W. S. No. 10, fol. 16.

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The following instructions from Horatio Sharpe, Esq. governor of Maryland, to the judges of the land office, was ordered to be entered upon record.

" Whereas I have been informed, that a certain James Barrance hath obtained an escheat warrant to affect a tract of land, called The Resurvey or Plunk's Doubt, lying in Fre-

derick county; and late the property of a certain George Mock of said county, a German, who died seized thereof before he was naturalized, I desire you will not suffer any patent, to issue for the said land to the said Barrance or any other person until further orders; and you are not without particular instructions from the lord proprietary to grant escheat warrants for any other land which hath already or may hereafter become escheat to his lordship by reason of the death of any Germans who have died or may die before naturalization, unless such warrants shall be applied for by the heir at law of the persons dying seized.

HORO. SHARPE."

The 21st of April, 1767.

"*To the judges of the land office.*"

LIBER W. S. No. 10, fol. 109.

CHAPTER XVI.

LAWS, AND LEGISLATIVE PROCEEDINGS, RELATIVE TO LAND AFFAIRS.

THE reader will long since, have perceived that the modes of acquiring original titles to land under the propietary government were not regulated by law, but almost wholly by ordinances and instructions proceeding from the sole authority of the proprietary: consequently there is not much to notice under this head, the land laws, which originally formed no part of lord Baltimore's system, but took their rise while the government of the province was out of his hands, being reserved for an appendix or supplement to this compilation. A few acts of short duration, relative to land affairs, were passed in the early times of the province: among these were "*an act touching taking up of land*," and an act or declaration "*concerning rights of land.*" The first was passed in 1642, re-enacted at the next session, and expired in 1645. The other is among a number of "acts and orders" of an assembly held by commission from Cromwell on the 20th of October 1654, and was occasioned by the proclamation of governor Stone of the 7th of February 1653, declaring that those who did not comply with the conditions of plantation, as well by taking the oath of fidelity to the lord proprietary

as by suing out grants, and paying rents, agreeably to those conditions, should have their lands entered upon and seized for his lordship's use. Besides these temporary laws there was one passed in the year 1650, before the government was seized by Cromwell, entitled " an act concerning deserted plantations," which was afterwards re-enacted, and was in 1676 confirmed among the (*a*) perpetual laws. During the long suspention of the proprietary government various bills were proposed, connected with the business of the land office, and some of them appear to have been passed by the two houses of assembly, but not to have received the royal assent. Two were however passed into laws, the one in 1692, entitled " an act for securing the rights of several persons," and the other in 1707, " requiring the agents of " the lord Baltimore to certify into the secretary's office the " instructions and conditions of plantation, with the fees by " them demanded, and obliging his lordship's deputy sur- " veyors to qualify themselves according to law." The intention of the first was to give to certificates in the predicament therein described, all the force and validity of patents ; and it was attended with the singular circumstance of not being preserved entire on record, the last section, which contained provisions more harsh than the rest having been left out when the readiness of the proprietary's officers to remove all causes of complaint, had shewn it to be unnecessary. The other is an act in the same spirit of jealousy, and of hostility towards lord Baltimore, which dictated the former one, and operated I presume only while that spirit remained, or until the rights of the proprietary's officers were settled by the orders of the crown. As these two acts are printed at large in Bacon's edition of the laws, it would perhaps be improper to insert them here. Other laws were passed at this and later periods, relating chiefly to the proprietary's revenue affairs, which will be noticed in the succeeding chapter. In regard to acts concerning boundaries, and the marking and bounding of lands under commissions from courts of law, besides that they are to be found in the editions of the laws now in use, they do not enter into the design of the present compilation, which is confined to the history and operations of the land office, and the modes of obtaining original titles to land. I shall now insert the three acts first abovementioned, and having in a former place hinted, in speaking of the manage-

(*a*) I shall not stop to give a full account of the design and effect of this distinction.—The questions and proceedings respecting the validity and duration of the laws of Maryland are numerous and confused. I can only observe that the second proprietary at his accession caused a complete revision to be made of the acts of assembly, and that the laws of the province were from that time considered in two classes, temporary, and perpetual.

ment of land affairs, at an occasional interference by the legislature, I shall add, under this head, a few passages from the journals of the upper house of assembly, to shew the nature of this interference, and the sense of the house upon the points that were brought before it.

" *An act touching taking up of land, passed at a session commencing the 5th September*, 1642.

" Where any one entreth upon any land to be held of his lordship, or taketh out warrant for such land in any certain place, he shall enter into rent the next Chrismas following, except the right saved to adventurors by condition of plantation, and if the surveyor be found in delay after his warrant delivered to him he shall be liable to the party to the value of the rent till he hath returned his survey, and the secretary shall be liable in like manner for delay of drawing the patent after the survey returned and warrant for drawing of it.

" Every one claiming title to any land in certain to be holden of his lordship may demand his claim to be entered upon record, and such entry shall bar all ensuing grants of the same land till the claim be tried.

" Warrants for laying out of land (without any certain place assigned) delivered to the surveyor shall bind the surveyor to lay the lands out according to the order as the warrants were delivered to him upon pain of recompence to the party greived (except he have other instructions to the contrary, from or under the lord proprietary.)

" Upon the back side of every pattent, or in a schedule annexed before it be put to the seal, the surveyor being thereunto demanded by the party interested, shall describe the plott of the grant, with all the bounds named upon the grant, and a seal and compass it by which bounds the grant shall be interpreted and judged after.

" This act to endure for three years from this present day."

Assembly Proceedings, 1st book, fol. 293.

" *Concerning Rights of Land.*

" The assembly perceiving by the conditions of plantacon, which are imposed upon the inhabitants of this province of the lord Baltemore, and by his proclamation directed to his officers here, that none can hold any land of his lordship without violation of the liberty of his conscience, which he binds to take an oath, inconsistent with the laws of England now in force, and published, and so contrary to their engagement to his highness the lord protector and the commonwealth of

England; and all those that do not take such an oath, shall lose all their lands as seized for his lordship's use; the execution whereof eficatiously to be performed, he requireth and chargeth his officers in his own name to attend unto.—The assembly cannot see how they that have rights to land, can without collusion and deceit to him and themselves, apply themselves for rights of land to the said lord Baltemore, or his officers, that all those that transport themselves or others into this province, have a right to land by vertue of their transportation, that every one may enter their rights of land in their severall respective courts, and also may enter a caveat for such a particular tract of land as they have or shall take upp."

"Passed at an assembly commencing the 20th of October, 1654."

LIBER No. 3, fol. 431.

"*An act concerning deserted plantations.*

"Whereas divers persons who have heretofore taken up land within this province, have neglected the seating thereof for a long time, and others that have seated plantations have againe deserted them, suffering their said land and plantations to lye waste, and uninhabited, keeping their titles thereto neverthelsss still on foot, whereby others are hindred from taking the same up and seating near together for the common security, which is found to be very inconvenient to the commonwealth, and a great injury to the lord proprietary in the loss of his rent, and otherwise. *Be it therefore enacted*, by the lord proprietary, with the advice and assent of the upper and lower house of this assembly, that for all mannors, lands and plantations within this province, which have heretofore been either taken up or seated, and for four years last past, or longer, deserted or left uninhabited, by such as have or might have claimed right thereto, and his lordship's rents not paid, in case such person or persons (except orphans under sixteen years of age) as claim any right therein, shall not some time before the five and twentieth day of March next make such then right thereto appear respectively, and having not had any grant heretofore thereof legally passed unto him or them, demand grants thereof under the great seal of the province, and satisfie all rents for the same arreare to his lordship, it shall be at any time then afterwards lawfull for his lordship, or his heirs, lords and proprietary's of this province, or his or their lieutenant or chiefe governour of the province for the time being, lawfully authorized for granting of lands within this province, to grant the same or any part thereof, to

any other person or persons who shall desire grants thereof, according to the conditions of plantation then in force within this province, or other warrant or direction from his lordship, or his heirs, lords and proprietarys of this province, for the time being, under his or their hand and seale at armes, and that for all other mannors, lands, and plantations, already taken up or seated, or which hereafter shall be from time to time taken up or seated within this province, (not belonging to any orphans under sixteen years of age) which shall happen to be deserted or left uninhabited, by such as shall then have or may claime to have any right or title thereto, and his lordship, or his heirs, lords and proprietarys of this province, his or their rents due for the same not paid for three years together, it shall be in like manner at any time after the expiration of the said three years, lawfull for his lordship, or his heirs, lords and proprietarys of this province, or his or their then lieutenant or chiefe governour thereof, (being lawfully authorized as aforesaid) to grant the same or any part thereof, to any other person or persons who shall desire grants thereof, according to the conditions of plantation then in force within this provinee, or other warrant or direction as aforesaid.

Passed at an assembly, commencing the 29th of April, 1650.

LIBER, No. 3. folio 32.

" *Upper house of Assembly—September* 28*th*, 1663.

" Then came a messenger from the lower house, and question being then moved, whether in case any person hath formerly surveyed land and obtained grant thereof from the lord proprietary, and some other person come afterwards, the surveyor not knowing the former bounds of the land adjacent, and runs his lines within the lines of the land formerly granted, and also obtain grant for the same from the lord proprietary, whether the latter pattentee shall by this act hold the land so by him surveyed and patented, against the former pattentee.

" And the upper house declared their sense to be, that by this act the latter pattentee shall not hold such land against the former patentee; and question being further moved, in case land be only surveyed and not pattented, whether the title of the first survey shall exclude all after surveys, even though the latter survey has been prosecuted so far as to obtain a grant under the great seal, and the upper house declared their sense to be, that the first certificate being entered upon record, shall exclude the latter survey, though prosecuted so far as to obtain a grant under the great seal, this act notwithstanding, provided the person that hath interest in the first survey have not suffered the time, viz. 12 months (in

which he ought, by his lordship's condition of plantation, to have taken a grant of the said land) to be elapsed."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 53.

" Robert Dunn, by his petition to the upper house of assembly, (on the 20th of September, 1664,) sets forth that about twelve months past, John Hood made a survey near to the wading place to the Isle of Kent, on the Eastern Shore, the certificate of which was delivered to Philip Calvert, Esq. secretary, but in the subsequent disturbances of the province had been lost, and that Hood dying, another person had surveyed the land and obtained a patent therefor. He prays that the said patent may be made void, and that the orphan heir of Hood may have patent according to the original survey. The following is the proceeding of the house on this petition :

" There appearing nothing upon record which may evidence the claim of the petitioner to the land, this house think it inconvenient to question a patent under the great seal, upon bare affidavits, but that notwithstanding the petitioner may have the benefit of the rights upon which the land was taken up."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 79.

" On considering the petition of Ignatius Causin, to be naturalized, it appeared that he was the son of Nicholas Causin, a subject of the crown of France, and born at the house of his said father of an English mother ; that the lands claimed by the said Nicholas were only surveyed in his lifetime, and patented since his death by the petitioner : whereupon the house declares that the said Ignatius is by his lordship's charter a free denizen of the kingdom of England, and by consequence, as to his person, needs no naturalization, being born here ; and, as to the lands, said to descend from the father, the house declares, that the certificate of survey was only a *chattel real*, of which the petitioner's mother, an English woman, was seized, and which she made over to the said Ignatius, in right of which he obtained an original grant from the proprietary, and so holds nothing by descent from his father, but is, to all intents and purposes, one of the natural born people of the province, and has as much security for his lands as any other person, or as the proprietary can grant."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 190.

" 22*d May*, 1674.

" After a full recital of a certificate, dated the 17th September, 1662, and commencing in the following words, viz : " Laid out for William Battin, of this province, planter, a " tract of land lying in Charles county, called Battin's Dales,

" on the west side of Wiccocomoco river, and on the west " side of Sacaio swamp, being about half a mile north from " the land called Daniell's Mount, to be holden of the mannor " of Sacaio, beginning at a marked oak, upon a hill by a great " swamp, near a cow path called Sacaio path, bounding on " the west," &c. a question is propounded where the *beginning* of the certificate should be : A committee appointed for the purpose of considering this question, refer it back to the whole house, by whom it is declared, in their opinion, to be at the words " *beginning at a marked oak*, &c." and the preceding words to be " no essential part of the certificate, but " only serving as a direction to find out the land therein con- " tained."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 226.

" Capt. Burgess sent by the lower house with the following vote :

" The committee being present in the house, and the act for deserted plantations being read, VOTED that this house supplicate his lordship, by petition, that he would be pleased to assure his rents some other way than by escheating lands in so short a time as three years, for the non-payment of rent, and that his lordship would be pleased to take no advantage by any forfeiture that is not actually escheated already, by virtue of the law for deserted plantations, and that the upper house would be pleased to concur with this house therein, and that his excellency be desired, untill such time as his lordship's pleasure be known therein, to surcease any further prosecution upon that law ; and further that all persons may have liberty to sue out their grants for their lands, the rights being good, though the certificate be of never so long standing, and the land not yet actually escheated, and that for the time to come, all instructions that his lordship shall please to transmit to the governor or other officers, about land, may be published, and recorded in the respective county courts, within six months after the said instructions shall come to the hands of the said governor or other officers.

Signed per order,

HOBERT RIDGELY, Clk."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 239.

June 3d, 1676.

" Came in a petition exhibited by Giles Stephens, against " Charles James, for relief against the said James, his o- " mission of returning his certificate of survey upon a war- " rant obtained by the said Giles for 300 acres of land, " bearing date the 20th of April, 1674, and surveyed by the

" said James by virtue of the said warrant, and upon hearing " on both sides, it is considered, that the said James do " forthwith return the said certificate of survey to the secre- " tary's office, and satisfy the costs and charges expended by " the said Giles Stephens in several journies to St. Maries " about the said business."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 280.

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Paragraph of a declaration made by the lord proprietary, in presence of both houses, at the closing of a session—April 26, 1684 :

" As concerning the words '*more or less*' in all patents " and grants of land within this province, often disputed " amongst the inhabitants, his lordship, to remove all contro- " versies or disputes of that nature for the future, doth in " presence of both houses, declare and make known, that " by the same shall be construed an taken TENN in the hun- " dred, over or under."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 719.

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" *3d November*, 1698.

" It being the opinion of their lordship's the right honour- " able the lords of the council of trade and foreign planta- " tions, that such great tracts of land ought not to be grant- " ed to persons unable to cultivate them, the house will do " well to make some order therein, to be served upon the " lord Baltimore's agents, to take care therein."

1st UPPER HOUSE JOURNAL, commencing 1657—fol. 1012.

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" *May* 9*th*, 1700.

" A proposal from the lower house to have the lands of the Piscataway Indians, run out according to the direction of Major William Boarman, is declined by the council (or upper house) who prefer, they say, " a plain record to the re- " membrance and direction of a deaf old man."

UPPER HOUSE JOURNAL, commencing 1699—fol. 143.

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" *Sept.* 14*th* 1704.

" A message brought from the lower house, stating it to be reported by the committee of grievances, that lord Baltimore's agents exact 480 lbs. tobacco for every hundred acres, and refuse to give patents for the land till the purchase money be paid. Ordered, that Mr. Carroll, one of those agents, have notice to attend, and shew by what authority he requires the same. He appears, and states, that he had instructions for that purpose from lord Baltimore, of which he gave public notice, and of which he produces a copy ; states the reason

of the addition to the price of land to be, that one half of the fees due to the proprietary's officers, were given to the king's secretary; but that if it might be thought fit to restore the land records and the fees to those officers, the addition should be taken off, and security given for the safety of the records, &c. The proposition approved by the committee and the lower house, and a conference therein requested."

UPPER HOUSE JOURNAL, commencing 1699—fol. 287.

"Report of a conference appointed to enquire into aggrievances relating to the land office, and lord Baltimore's agents.

"The conferees having laid before them and read the message of the house, and the order of his late majesty in council, concerning the division of the fees of that office between lord Baltimore and secretary Lawrence, report:

"That an act or ordinance ought to be passed, that whatever warrants hereafter may be drawn by his lordship's officers, and assigned either in whole or in part, that on return of the certificate, it shall be lawful for the owner to demand a grant thereof, notwithstanding the purchase money be unpaid by the first taker up of the warrant, and that notice thereof to be given to his lordship's agents:—

"That forasmuch as the land records are much torn, damnified, and some part lost, and that the offices for granting of lands are now in two several persons, which were heretofore entire, and that their being so divided occasions his lordship to double the purchase of his warrants, they pray her majesty may be addressed for remedy thereof."

UPPER HOUSE JOURNAL, commencing 1699—folio 303.

CHAPTER XVII.

OF THE PROPRIETARY'S RENTS AND REVENUE AFFAIRS.

THE revenues of the lord proprietary were of two general kinds; the one being derived from his territorial rights under the charter, and the other from the concessions and bounty of the province. It is the first kind, only that has much connection with land affairs; and this embraced a variety of branches, among the principal of which were the purchase money of lands granted to settlers, and the quit

rents and alienation fines reserved upon them; for, with regard to the *condition of purchase*, it is to be observed that, although this consisted at first, as has been stated, in the mere act of emigration for the purpose of inhabiting, &c. other terms were subsequently imposed, and various prices, in money or commodities from time to time assigned, for the lands that yet remained vacant. The provisions made by acts of assembly, in aid of those sources of revenue, for the support of the proprietary, are matters belonging rather to the general history of the province than to that of the land office establishment:—I shall therefore notice them only so far as they stand connected with the subject of the rents and fines abovementioned, and in regard to the inherent land revenue, as it may be called, of the proprietary, it is not so material to ascertain all the minute branches of which it might consist as to describe the system of collection, and the connection of that system with the operations of the land office.—I must however mention, again, that the interpretation of the charter, as it respected lord Baltimore's absolute ownership of the province in the light of a private estate, was not free from question, but that his theory and pretensions were on many occasions opposed, as involving a power to defeat the main end of the grant, and the just expectations of the original settlers, in withholding those facilities and encouragements which might be requisite towards the growth and improvement of the colony. There is no doubt that the founder of the province of Maryland fulfilled very faithfully and honourably every intention of his grant; but the privilege of raising at his pleasure the conditions of plantation, or the price of land, was not fully acquiesced in by the colonists, especially during the periods of trouble and interruption of the proprietary government. An instance of the disposition of the people to dispute the proprietary's construction of his grant has been shewn in the act concerning "*rights of land.*"—Many other documents, and passages in the records concur to prove that there never was, at least in the early times of the province, a perfect understanding on this subject, but, that while lord Baltimore altered and raised the terms of his grants of land by instructions to his chief officers, as any common land proprietor might, by direction to his steward or other agent, the government generally viewed the conditions of plantation, and instructions relative to land affairs, as matters of public and political concern, which ought not only to be universally known, but to be more fixed and permanent than they actually were. Accordingly, the chief agent was not only called upon, as has been seen, to certify the existing instructions, but, was required also to produce a correct copy of the charter: that these instruments

might be tested by it. The principal effect, however, of the contests here spoken of has been to make it somewhat difficult to ascertain with certainty all the branches of the proprietary's revenue, especially those accruing under feudal customs, which were often the subject of dispute; for the tenacity of the proprietary's officers seems to have kept pace with the enquiring disposition of the people, and they did not, in general, condescend to explain very minutely the grounds of his various privileges. The right to dispose of lands at such price, and with such reservations of rent, as he pleased, the proprietary continued to maintain, as well as his claim to surplus, escheat, and forfeited land, respecting all of which disputes had also occurred.

The connection between the proprietary's revenue system and the operations of the land office was extremely close, insomuch that it is, in some views, difficult to distinguish the latter from those establishments which were deemed of a private nature, as having to do with the proprietary's private estate. What necessarily distinguished it, however, and kept it in some degree under governmental controul, was the circumstance of its being the depository of all original titles to land, and therefore an office in which all land holders, and the government as representing them, had a direct interest, while, in the mere fiscal establishments of the proprietary, the persons employed were, to all intents, private agents, and amenable only to his own authority. At every period there was, of course, some person or persons commissioned for the general receipt of the proprietary's rents and dues of all kinds. The style of that trust was sometimes *agent and receiver general;* on other occasions *chief agent in land affairs;* which last title, concurring with an actual controul over the business of the land office, and, for a certain space of time, the custody of the great seal, required for the perfecting of grants, almost destroyed the distinction which the legislative body of the province was justly anxious to maintain. In the famous contest of 1771 between governor Eden and the lower house of assembly, concerning the right of regulating the fees of the land office by ordinance or proclamation, instead of by law, the substance of a great deal of ingenious argument seems to have been, on the one side, that the proprietary had a right to dispose of his private estate as he thought proper, and to direct the forms to be observed in his grants, and the terms of those grants, including the fees ordained for the services of his agents or officers:—on the other side, that, if the proprietary had the power to ordain such exorbitant fees as might prevent land holders from inspecting the records, and obtaining necessary transcripts, or, in a word, deprive them of recourse to the fundamental

evidence of their titles, when brought into question, those persons would then be tenants at will of the proprietary, and not fee simple owners of their lands. The idea of a reliance on the moderation and justice with which this power would be used was exploded by the delegates in the following admirable sentence, contained in one of its addresses to the governor :—" *for, who are a free people? not those over* " *whom government is reasonably and equitably exercised, but* " *those who live under a government so constitutionally check-* " *ed and controuled that proper provision is made against its* " *being otherwise exercised.*"—I have touched here upon this well known incident in order to shew that the very nature of the land office of Maryland has been as equivocal as its rules have been obscure ; and that it was therefore high time, since the proceedings in that office must long continue to be an object of interest and research, that some memorials, however imperfect, should have been collected relative to its history and practice.

I have said that the proprietary had always a chief agent and receiver in the province : to state, with precision, the successive commissions of this kind which are found on record, with the different authorities from time to time conveyed to those officers, would swell this article beyond the space that can be afforded to it. I shall therefore only observe generally that, in the early periods of the province, the place of general receipt was at the seat of government, *St. Marys*, where, it will be perceived by reference to old patents, the proprietary's rents were payable half yearly, at Lady-day and Michaelmas : the persons entrusted with the receipt were not, for several years, officers appointed for that sole purpose : the power appears by the first commission of the kind on record to have been vested jointly in the governor and secretary ; but the governor alone seems to have been more commonly the sole general or ultimate receiver during the life of the first proprietary ; and, as in the case of the probate of rights, when the colony became in a considerable degree extended, subordinate officers were, for the ease of the people, charged with the immediate receipt of rents in the several counties, and made accountable to the general office at St. Mary's.

Precisely at the time when Charles lord Baltimore, the second proprietary, established the land council, already noticed, he commissioned Henry Darnall, Esq. to be receiver and collector of all his " rents, port duties, impositions, profits, perquisites, debts, and dues whatsoever," with power to appoint deputies, and with a general superintendance of the sheriffs, and all persons in any manner concerned in the

business of collection—from this time there was always a chief agent and receiver, with similar, and in some instances with much more extensive authorities :—but, instead of tracing all the different regulations and incidents on this head which might occur in the space of more than eighty years, I shall pass at once to that period which comes the nearest to our own times, and at which the revenue affairs of the proprietary received a full and complete organization.—This was soon after the accession of Frederick lord Baltimore, who, after some previous instructions and authorities given to the successive governors, Ogle and Sharpe, respecting the management of his revenues, sent over in the year 1761, a lengthy set of instructions to his chief agent, Edward Lloyd, Esq. in which, among, other matters, after reciting that great inconveniences had arisen to his ancestors and himself from the want of a proper office or repository in the city of Annapolis for the reception and safe-keeping of the books and papers relating to the proprietary revenues, such as counterparts of leases, copies of rent rolls and debt books, farmers or receivers bonds, naval officers accounts, &c. he gave direction for the erecting or purchasing a suitable house for that purpose, to be thenceforth called the office of the receiver general.—In the year 1766 he conceived the design of establishing a superintendance and authority in revenue matters, superior to that of the receiver, and, by successive commissions and orders, erected what has been termed the *board of revenue*, consisting of the governor, the commissary general, the deputy secretary, the attorney general, and the judges of the land office. The first regular meetings of this board were in the year 1768, when they took into consideration the entire subject and system of the proprietary's revenues, and framed full instructions for every class of officers concerned in their management or collection ; namely, the agent and receiver general, the rent roll keepers, the farmers or receivers in the several counties, the judges of the land office, deputy surveyors, the commissary general, clerks of the provincial and county courts, attorney general, sheriffs, examiner, and naval officers. From these instructions, and other documents, the revenue system appears to have been as follows :

There was a general rent roll keeper for each shore, whose duty it was by a certain day in every year to make out, sign, and deliver, the necessary debt books to the farmers or receivers of the quit rents in each county of their respective shores. In order that the rent rolls might be complete the judges of the land office were bound to return to the keepers, annually a list of all the lands patented within the twelve months immediately preceding. Returns were also to be made to them by

the commissary general, and register of the prerogative office, of all alterations in the possession and title of lands, whether by descent or devise, and the clerks of the provincial and county courts were to make return of all alienations of land by them recorded within the year, the substance of which returns was to be added to the former entries :—the debt books contained the names of all persons that possessed land within the counties for which they were respectively made, and the name and quantity of every parcel of land, under what rent held, and what quit rents each tenant was annually to pay for his land whether he might hold one or more tracts :—the gross amount of those debt books was to be reported by the keepers to the proprietary's agent, and new and complete copies of the rentall were to be prepared by them, and lodged with the clerk of the revenue office.

The receivers were to return back, within a stated time, annually, the debt books received by them for the preceding year, accompanied by such observations as might tend to make the rent rolls more perfect, and with a probate that no quit rents had been received which were not there stated ; that they knew of no tracts *patented*, *improved*, or *occupied*, but what were there entered, and that the persons employed by them to assist in the collection had taken a similar oath.

The rent roll keeper upon thus receiving back the debt books, stated an account for each receiver, debiting him with the gross amount of the debt book, and crediting him with all warranted allowances, any disputes concerning which were to be submitted to the revenue board, and distinct copies of these accounts were to be furnished to the agent, and to the board.

The receivers were authorised to sue or distrain in his lordship's name or their own.—On blank leaves, to be left in the debt books, they were to note alienations happening after the receipt of those books, and errors and defects in the books themselves ;—to enter lands not duly charged ;—to demand arrears of rent, and to consider the discovery of such arrears, a part of their duty.

In consideration that the rents were payable half yearly by the tenants, the receivers were required to make a payment of one third directly after their first receipts, and to make before the close of the year a full and complete settlement with the rent roll keeper ;—immediately after such settlement, to produce to the receiver general the debt books, examined by the keeper, together with the settled account, signed, and pay the remaining two thirds of the collections, ten per cent being allowed for their services :—they were to have free access to all offices, with liberty to take copies

or extracts without fee, unless the attestation of the officer was required, and were to transfer such copies to their successors: in case of disputes with the tenants, they were to apply to the attorney general or his deputies for advice and assistance: they were in all things to observe the instructions of the board of revenue, and to return all books and papers in their charge to that board when called for.

The judges of the land office were to issue no original warrant, nor to grant patents on resurveys, where vacant or escheat land, or improvements, were to be paid for, until the agent had certified the arrearages of rent and caution money to be paid:—they were to file and record the agent's titlings, and return the file and book every year into the revenue office for examination: to return, annually, to the keepers of the rent roll a list of all patents issued during the preceding year; and, in the instructions to these officers an appeal was intimated to lie from their determinations to the revenue board.

The instructions to deputy (or county) surveyors contained scarcely any thing directly referable to matters of revenue, except the obligation of endeavouring to discover lands occupied or held without the payment of rent, or without title, and of reporting such discoveries to the receiver general:—This board nevertheless undertook to prescribe and regulate the entire duty of surveyors, and the operations of the land office, as if neither the one or the other had any functions, or existence but what concerned the private estate of the proprietary.

The commissary general, deputy commissaries, and the clerks of the provincial and county courts, were, as has been before mentioned, required to make such returns as their respective offices might furnish, evidencing the mutations of property, with a view to the perfection of the rent rolls: the clerks were to keep distinct dockets of all fines paid or secured, and to insert, previous to every sitting of the courts, in the docket of the attorney general, or prosecutor, a list of these and of all recognizances; at a certain time, to deliver to the sheriffs lists of all fines remaining due, and to transmit copies of such lists to the revenue office:—The instructions to the attorney general and sheriffs went, of course, to the due execution of all that was proposed by the above mentioned returns, but the former was, besides, required to notice and report to the revenue board such *convictions* of free persons as might be attended by forfeiture of lands.

The examiner was to make to the revenue board an annual return of all certificates by him examined and passed, shewing the nature of the warrants on which they were respectively founded, and the quantities of land taken up.

The naval officers were required faithfully and carefully to collect and receive the twelve pence per hogshead arising due by the exportation of tobacco for the support of government ;—and the tonnage duty of fourteen pence per ton, payable to the lord proprietary, on foreign ships or vessels entering and clearing out at their offices ; to make return annually to the revenue board, on oath, of all vessels subject to these duties, or either of them, that had so cleared out; to render a similar account to the agent, and pay the money collected, retaining a commission of two per cent.

The agent or receiver general was also intrusted by this board in all the details of his duties, most of which may be inferred from those of the subordinate officers. With respect to the land office he was to grant titlings for special or common warrant on the receipt of five pounds sterling per hundred acres, which after many changes, was the last and highest rate of vacant land under the proprietary government. In regard to such warrants as required no titling, namely those of resurvey, (proper) those of escheat, and those under the proclamation, he was on the return of the certificates, and before the issuing of patents, to receive at the same rate for vacancy included, (counting as such, in case of proclamation warrants, the land included in the original certificate) and the reasonable value of all improvements found on such vacant or proclamated land. In case of escheat, for the discovery of which a premium of one third, and a preemption as to the rest, was due by the existing regulations, he was, on return of a certificate, to set a reasonable value on the whole tract, and if the discoverer would not take the whole land at two thirds of that value, a reserve was immediately to be laid on it, and the agent was, as soon as conveniently might be done, to set up and sell the whole tract to the highest bidder, and pay to the discoverer one third of the purchase money: In all cases he was to endorse his receipts of caution money, &c. on the certificates. He was to make entries of all titlings granted, and certificates compounded on, in his office ; shewing the names of parties, kind of warrants, quantities of land, and sums of money received, in the fullest detail, and furnish a statement thereof with his annual account to the revenue board.

The agent was further to receive from the stewards of the proprietary's manors and reserves all rents, arrears of rent, fines, penalties and forfeitures, becoming due from the tenants on those lands : he was to take care that the reserves, some of which were specified in these instructions, were not affected by warrants, by encroachments, or by any thing done in *his* office :—He was to let out the public ferries on lease for three years, on payment of three pounds sterling for each

lease so granted:—He was to receive, from the immediate collectors of them, the alienation fines, the collection of which these instructions permitted to be transferred from the clerks, or the private agents theretofore employed, to the farmers of the quit rents, and to receive all fines and forfeitures becoming due to his lordship under acts of Assembly, or at common law, which were in the first instance to be collected by the sheriffs: He was, like other officers, to use his utmost endeavours to discover lands omitted on the rent rolls, and was to render an annual account to the revenue board of all his transactions.

The proprietary not satisfied with all these arrangements, erected another office under the denomination of *supervisor of accounts, lands, and revenues in and from the province of Maryland*, which was vested in John Morton Jordan Esq. then in England, by a short kind of commission dated the 16th August, 1768, which authorised him to open a correspondence with such persons as he might think qualified to give information or assitance towards the improvement or collection of the proprietary's revenues, or the better regulation of his manors; and directed that the board of revenue should transmit yearly, a double set of accounts to England, one to the said supervisor, and the other to Hugh Hammersly, Esq. his lordship's secretary, and that the said board should receive and pay proper attention to whatever information and assistance Mr. Jordan might from time to time communicate to them. This commission however did not long remain in force. Mr. Jordan was sent over to Maryland in the character of agent and receiver general, and dying soon after, was succeeded by Daniel of St. Thomas Jenifer, Esq. who had, before, held that office under the appointment of the revenue board, and who now continued to hold it until the proprietary rights were dissolved by the revolution.

The proceedings of the board of revenue shew in a strong manner the propensity of the old government to view the land office as a private revenue establishment, not subject to the controul or inspection of the regular provincial authorities. They were, indeed, the same persons who held responsible offices in the government;—the governor being one, and the others being generally, besides their particular posts, members of the council; but it was as a board of revenue agents alone that they acted in land affairs. Until then, whatever appeal there was from the decisions of the judges of the land office was to the governor, either as such or in the character of chancellor. This board not only assumed an appellate jurisdiction in contests in the land office but undertook to act upon various applications that had not even passed through that office. Their proceedings, in short, began to

have some resemblance to those of the former *land council*; but their authorities took a much greater range: the renewal of leases within the proprietary's manors and reserves, and the inspection of the conduct of the stewards of those manors, &c. and that of the rent roll keepers and farmers of the revenue, formed the principal part of their current occupations; but, the extensive idea which this board had of its power in reference to land affairs was shewn in a particular business which for its importance in every view requires to be noticed.

The proceeding and the contest of which I am about to give a succinct account related in their original cause to what concerned the territorial extent of lord Baltimore's grant, respecting which as much has been already said as the small space that could be alloted to that subject would allow.

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On the 16th day of April, 1764, governor Sharpe issued the following instruction to the judges of the land office, viz.

" GENTLEMEN,

" The lord proprietary being desirous to have 10,000 acres of land reserved in the western part of Frederick county for a manor, I have given the surveyor of that county instructions to execute no warrants whatever on the lands lying beyond Fort Cumberland till the above quantity is surveyed and laid out for his lordship; of which you will be pleased to take notice and cause the same to be communicated to any person that may apply for warrants that may affect land in that part of the province.

I am, Gentlemen,
Your h'ble servant,
HORO. SHARPE."

On the second of January, 1769, the same governor as presiding member of the board of revenue, laid before that board plats and certificates of lands reserved for his lordship's use in the western frontier of the province, and with their concurrence issued and published, in the English and German languages, the following notice.

" *Annapolis, January 2d*, 1769.

" Whereas sundry persons have heretofore purchased warrants and made surveys with a view of securing land in the western part of the province beyond Fort Cumberland, but have been restrained from obtaining patents on the same by reason of a prohibitory order signified to the judges of the land office, and as the reasons for continuing such prohibitory order no longer subsist; it is hereby notified to all persons who have purchased warrants or made surveys for the purpose abovementioned, that they lay before his lordship's

board of revenue on the twentieth day of February next, a true state of their pretensions, that such orders may issue for granting them the benefit of their respective warrants, or surveys, according to the priority thereof, as may be thought just and reasonable."

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On the 23d of February, 1774, *Mr. Harford* being then proprietary of the province, and Robert Eden, Esq. governor, a petition from Thomas French relative to the "taking off "the reserve to the westward of Fort Cumberland, except "lands actually surveyed and certificates thereof returned for "the use of the lord proprietary," was taken up by the revenue board: On this occasion, an entry was made, reciting that the late lord proprietary had been desirous of having 10,000 acres of land laid off in that part of the province for a manor, and that, in order to secure the same, governor Sharpe had thought proper to lay a general reserve until such manor should be ascertained, which had not been done, but that in lieu thereof five different tracts had been actually surveyed, and certificates thereof returned, containing in the whole the quantity of 127,680 acres. After stating those general facts in relation to the object of Mr. French's petition, they postponed the further consideration of it for the purpose of a previous enquiry into the reasons which had occasioned the quantity of ten thousand acres to be thus exceeded.

On the 26th of March following, the board took this business again into consideration, and after reciting the several surveys that had been made as aforesaid, whereby, they observed, the intent and design of the reserve had been fully answered, and after suggesting as motives for the measure the augmentation of the proprietary's revenues, and the settlement of the back country, they resolved that the deputy surveyor of Frederick county should be instructed to execute such warrants as should be put in his hands on lands westward of Fort Cumberland, provided that he did not run into or interfere with any of the surveys made for the lord proprietary, for the purpose of avoiding which he was to be furnished with copies of the lines, courses and boundaries of the said surveys:—The governor was not present at these proceedings, but approved of them when presented to him.

The land office being thus opened in respect to the lands westward of Fort Cumberland, large warrants were immediately taken out, chiefly by persons of note, who from their situations were probably apprised before hand of the measure intended, and enabled to make preparation for benefiting by it. The proprietary's agent, Mr. Jenifer, on this occasion ventured to disapprove of what had been done, and addressed

a letter to the judges of the land office, in which, after mentioning several surveys already made, and others then making, of these western lands, he desired *and insisted*, on the part of the proprietary, that no patents should be issued for them until his lordship's pleasure should be known :—He represented that some of these surveys were located beyond the Allegany mountains, in contravention of the king's proclamation of the 7th October, 1763. In addition to the impolicy which he attributed to the whole proceeding, he censured it as unjust in reference to the back inhabitants, who had "stood the brunt of two Indian wars," and some of whom had obtained warrants, with a view of locating them on those lands, before the reserve was laid, and now, for want of notice, had not an equal chance with others for making advantageous locations. One of the judges, in answer to this letter, stated that the agent had received notice of the governor's intention to take off the reserve, and had been informed that the issuing of warrants must depend on him, as they could not be granted until he the agent had certified that the caution money was paid: that when this was done, the rest followed in course : the person bringing a titling must have a warrant, and he who returned a certificate must have a patent, supposing all requisites to be complied with. The agent rejoined by throwing the responsibility in regard to location on the judges of the land office, as he could not refuse warrant to any person that applied for it, but gave no direction that the surveys should be made westward of Fort Cumberland. The rest of the dispute turned upon the policy of the proprietary's enforcing his claim at that juncture to what they both agreed were his just limits, to wit, a meridian line drawn from the head of the south instead of the north branch of the Potomack. The board of revenue finally took up the contest, by a kind of manifesto, entered on their journal, in which, after reciting the correspondence just mentioned, they justified their proceedings by a variety of reasons, very warmly urged, and found great fault with the agent's interference.—This defence appears to have been transmitted to the new proprietary, or rather to his guardians, to whom Mr. Jenifer is also supposed to have made an appeal. The result of the contest was that, on the 6th of October, 1774, the judges of the land office received instructions to suspend all further proceedings upon the governor's order to them of the (*a*) 22d March preceding, and to prepare, for the use of proprietary's guardians, accurate lists and statements of all warrants issued,

(*a*) There is some disagreement concerning the date of this order; the proceedings of the board of revenue being on the 26th, but this is the date assumed by the state government in the measures which it took respecting the unfinished business arising out of this transaction.

and measures taken, in consequence of that order, and also of all settlements and locations made within the limits therein mentioned since the year 1763. In short the proceeding in question was disapproved, and the agent came off with advantage: but, the board of revenue, and the proprietary government, with all its establishments, were now drawing to a close: the last sitting of the board was on the 11th of January, 1775, at which time they passed a vote affirming the power of the governor, under instructions from the late proprietary to the judges of the land office, to grant warrants, not exceeding 100 acres each, on a credit of two years, for the purpose of encouraging settlements in the back part of the province. This vote seemed to be intended for the benefit of people who had already settled and made small improvements in the back country, and, was probably occasioned by the animadversion of the agent on the conduct of the board in authorising surveys west of Fort Cumberland without such notice as might have given those distant inhabitants an equal chance for good locations: but it is not perceived that warrants were issued on the terms which have been mentioned.

I promised in a former chapter to take some further notice of the proprietary's alienation fines. The proceedings relative to these, and the quit rents, are far too numerous to admit, within the limits of my plan, of a detailed account: I shall therefore only touch upon the most general and important circumstances concerning them. The assembly, induced by a sense of gratitude towards the proprietary (Cecilius) for his "unwearied care," and the great expence that he had sustained "in preserving the inhabitants in the enjoyment of their "lives and liberties, and the increase and improvement of "their estates," passed a law in the year 1671 for his support, and for defraying the charges of Government. By this a duty was imposed of two shillings sterling on every hogshead of tobacco exported, the one half of which was to be applied towards maintaining a magazine of arms, and discharging the necessary expences of government; the other half was settled on the proprietary, in consideration of his receiving merchantable tobacco for his rents and alienation fines, at two pence a pound. This was afterwards continued as "an act of gratitude to Charles Calvert, Esq." the proprietary's son and heir, during his natural life, and was in 1676 further continued during the life of Cecilius the eldest son of the said Charles Calvert, then become proprietary of the province. Upon the government being seized into the hands of the crown, the collection of those duties was assumed by the new officers, and their product lodged in the treasury, as belonging to the public: at the same time an act was passed, in derogation from the former act so far as concern-

ed the collection and application of the one shilling per hogshead, destined to the public service, as it settled that sum as "an "annual revenue upon their majesty's governor within the pro- "vince for the time being." In 1704 a new act was passed, setling the said sum of one shilling as before upon the governor for his support, and that of the government, and admitting the right of the proprietary to the other shilling during his life, upon condition of his receiving the rents and fines in tobacco, according to the original stipulation, but holding him responsible for the arrears of the other moiety of the whole duty, which the assembly, in the acrimonious language of that day, stated to have been misapplied and converted to his own use. In the mean time lord Baltimore's officers met with many obstructions in the collection as well of his rents and alienation fines as of the duty of one shilling per hogshead, which he had always claimed as a matter of private contract between him and his tenants, sanctioned by law, to indemnify him for the loss he might sustain in his rents, &c. by receiving tobacco instead of sterling money; and the repeated orders of the crown, founded upon the complaints of his officers, and the counter-representations of the assembly, were scarcely sufficient to secure him in the exercise of his rights. He continued however to be entitled to the one shilling duty during his (*b*) life, as, being a private right, it was saved from the effect of any general repealing law. Upon his decease, in 1715, acts were passed confirming, first, to his successors the duty of one shilling for a limited time, and afterwards granting the new proprietary eighteen pence sterling per hogshead on condition of his receiving the quit rents and alienation fines in tobacco as before. It is here that the legislative proceedings became too complicated to be unravelled by so hasty an investigation as I have been enabled to give them. The proprietary, Benedict Leonard, died, as it would seem, without giving his assent to the acts in his favour, and great difficulties arose in the settlement of this matter with his successor. These concerned in some degree the guage and tare of tobacco hogsheads, and other regulations respecting the staple itself, which were calculated to affect the product of the duty, as well as of a tonnage duty in which the proprietary had also an interest. Equivalents in money were proposed for the rents and fines, and rejected. It appears however that by successive acts from 1716 to 1730, all having for their principal object

(*b*) His son Cecilius, (or, as the records call him, Cecill,) for whose life, also, the duty had been continued, died at an early age, I believe in Maryland, as it appears that he was in the country, and was left as nominal governor, upon occasion of his father's first absence from the province, in 1676, Jesse Wharton, Esq. being appointed deputy (or rather acting) governor on the same occasion.

the regulation of the export of tobacco, provision was made for the payment of the rents and fines in that article. At what time it finally ceased I am not enabled to state with certainty; but, in the latter period of the provincial government the rents and alienation fines seem to have been paid in money. Fines on alienations by devise were formally relinquished in the year 1742; but, on other alienations those fines, as well as the quit rents; continued to be charged and collected until the revolution made a short settlement of every thing that concerned the proprietary revenues.

CHAPTER XVIII.

FURTHER ACCOUNT OF THE CONSTITUTION OF THE LAND OFFICE, AND, GENERAL AND CONCLUDING OBSERVATIONS CONCERNING THE ANCIENT PRACTICE.

WE have spoken formerly of land affairs as being under the direction, at different periods, of the proprietary's lieutenant or governor; of the governor and council conjointly; the secretary of the province; the select land council, and the chief agent and receiver general. Until the distinct erection of the land office in 1680, the secretary, in whose care were the public records of every kind, was the officer charged with the issuing of warrants, passing grants, &c. having under him, for that and other purposes, a chief clerk, appointed and commissioned by the Government. Llewellin, who occupied that place at the time of the new organization, was naturally appointed register: By the authorities vested in him by his commission the power and responsibility of the secretary, were much lessened, and, except that all ministerial offices were considered as branching from that of the secretary, and in some degree under his superintendance and controul, there was no officer or tribunal between the register and the proprietary himself, in council, to act upon applications, or to decide judicially in contested cases in the office. In a word, there were not at this time, nor had ever been, JUDGES (so called) of the land office. This state of things continued for four years, when the land council was erected on occasion of the proprietary's going to England, and assumed the direction of all the operations of the land office, as well as the decision of controversies arising therein, the register having nevertheless the power of acting in ordinary matters without particular instruction. The revo-

lution in government and power in the province of Maryland, which began in the year 1689, and was completed in 1692, overturned, of course, the land council. The chief management of lord Baltimore's interests fell into the hands, successively, of Mr. Darnall and Mr. Carroll, his agents, and so far as any power could continue to proceed from the depressed proprietary, of judging between parties contesting the right to land under warrants and certificates, it must have been exercised by (*a*) those gentlemen. It must be acknowledged that the crown, long before the restoration of the powers of government to the Baltimore family, had discountenanced the undue obstacles that had been opposed in the province to the authority of the proprietary's officers in regard to the collection of his rents and revenues, and had issued orders such as secured to them the necessary facilities in this respect; but the general power of judging and deciding in land affairs was vested in the governor and council of the crown, and the public land office was under the care and management of the secretary, who was one of that council. It was upon the restoration of the original powers of government, at the accession of George I. that the station of judge of the land office was created. The first person recognized by that denomination was Philemon Lloyd, Esq. who appears to have taken it in virtue of a commission as deputy secretary of the province, under Thomas Beake and Charles Lowe, Esq'rs, joint secretaries, in the year 1715. The office of secretary was at this time held by the before mentioned gentlemen in England, for I do not perceive that they were in the province. The land office was, before this arrangement, under the direction and care of Charles Carroll, Esq. the proprietary's chief agent, who was denominated the register of that office. Upon Mr. Lloyd's appointment as aforesaid, he took possession of the office, and commissioned Mr. Edward Griffith to "be register and keeper of the land records in the province of "Maryland," while he himself took the style of JUDGE of the land office. The next person who bore that title was Edmund Jennings, Esq. who, by a commisssion from the proprietary, was constituted "JUDGE AND REGISTER *in and of* "*the land office*," with full power to hear, judge, and determine in land affairs in the said office "ACCORDING TO "RIGHT, REASON AND GOOD CONSCIENCE," and the several instructions and orders which he should from time to time receive from the proprietary relating thereto. The title of register thus vesting in the judge, he commissioned Mr. John Lawson on the 20th of March, 1732, to be "*chief*

(*a*) Messrs. Digges and Sewall, joint secretaries, had also some concern in these matters, for there was little besides land affairs to occupy any of the proprietary's officers. The agent appears, however, to have been the efficient person in all public transactions.

"*clerk, and keeper of the land records.*" Mr. Jennings was succeeded by Levin Gale, Esq. who was commissioned on the 16th of December 1738 judge and register, and, in his turn, commissioned Mr. Griffith Beddoe chief clerk and keeper of the records, as aforesaid. Philip Thomas, Esq. commissioned on the 13th of March 1743, was the last sole judge and register of the land office. On the 17th of May 1746, Benjamin Tasker and Benjamin Young, Esq'rs were commissioned, jointly, judges and registers of the land office, and Mr. Thomas Jennings, already acting, was commissioned by them chief clerk, *without the addition of* "keeper of the records." On the 13th of July in the next year a commission issued to Benjamin Young and George Stewart, Esquires, as before. On the 5th of March 1755 this commission was succeeded by one to Benedict Calvert and George Steuart, Esq'rs, still as Judges and registers, and in the hands of those (*b*) two gentlemen, though by a renewal of their commission under Mr. Harford, the office continued until the revolution, the place of chief clerk being held in succession by Mr. William Steuart and Mr. David Steuart, until, upon the resignation of the latter, after the declaration of Independence, the executive, then newly formed under the present constitution, appointed Mr. St. George Peale, by a commission dated the 21st of April 1777, to be "REGISTER of the land office," leaving the appointment of Judges, on which the constitution had been silent, to be provided for, as it afterwards was, by the legislature.

Connected with this enquiry is what concerns the offices of surveyor general, examiner general, and deputy surveyors. The first mentioned office, I have formerly had occasion to observe, resembled, from the tenor of the commission, rather the employment of a chief steward, or intendant, than that of a practical surveyor of land; and accordingly, the surveyor general seldom did make surveys, although there are instances of his being desired or directed to do so. In the early times he was always of the council. He appointed the deputy surveyors, upon such terms in respect to the fees as he thought proper to stipulate, and was held responsible for their conduct. In the middle period of the proprietary government this office was divided, a surveyor general being appointed for each shore. At a later period these establishments were complained of as useless, for the express reason that the officers never made surveys, and it is certain that, at the erection of the board of revenue, the surveyor-generals were so entirely without active public functions that the board could find nothing to instruct them about, and contented itself with passing through their hands the instructions prepar-

(*b*) Or finally in those of Mr. Calvert the survivor.

ed for the deputy surveyors. It cannot be pronounced however that these officers were in theory without use; for it was certainly of importance to maintain correctness and uniformity in the proceedings of the deputy surveyors, which, of course was the main end of these appointments. But the means were in practice not adequate to that purpose; for, after the appointment of an examiner general, it does not appear that the surveyor general saw the certificates returned by his deputies before they were received to be patented. I believe these offices did not continue to be filled after the arrival of governor Eden, as the deputy surveyors appear from that period, and at intervals before it, to hold their commissions from the governor himself. The great vice in this part of the proprietary system was that the surveyor general's emolument depended altogether on the quantity of work to be performed by persons of his own appointment, and that in his attention to the qualities adapted to that purpose, he might overlook other circumstances important to the fair and impartial execution of their trust. An officer to supertintend and controul the conduct of the deputy surveyor to concentrate and expound the various and disjointed regulations and customary rules governing the forms of surveys and the privileges of the several kinds of warrants, and to see that the certificates were in all respects regular and perfect before they were admitted to patent, could not have been without utility if the deputies had been appointed, or he had been compensated, by the public.

Concerning the duties of the examiner general, who, it may be alledged, might, at least, ensure the correctness of certificates, the commissions that were from time to time issued give but little insight. The surveyor general, in proposing, in the year 1685, that an examiner should be appointed *for his greater ease and security*, describes the purpose to be "to examine and approve all certificates of survey or "resurvey before such time as they be received into the of-"fice to be recorded," and the commissions say nearly the same thing; but in what particulars, and by what tests, the certificates were to be thus examined is no where explained. The examiner was, no doubt, to see that a certificate was correct in itself; that is, he was to measure the lines and compute the area of the plot; to compare these lines with the courses and distances expressed in the body of the certificate, and to see that they all agreed, and gave the quantity of land for which the certificate was returned. It is presumed that he also noticed any evident want of conformity with the warrant referred to in the certificate, or irregularity in the time of execution or return; and I am possessed of some accidental testimony that he attended to principles in regard

to *stringing* in resurveys, a practice used for the purpose of making a contiguity where there was in reality none: nevertheless, I believe that the examination of certificates did not fulfil the general purpose of preventing irregular surveys, or so many disputes would not have arisen on certificates that had passed into the office. It is true, that, by means of communication between the examiner and the surveyor general, the irregularities of particular cases might be made the ground of general admonitions and instructions, and it seems strange that those two officers could not together effect what one might easily do. The reason was that the surveyor general, whose province it was to superintend and direct the deputies, did not see their work, and that the examiner, who had no such authority, of course never extended his attention or views beyond the particular certificate before him,

Concerning the deputy, or county, surveyors, the active and efficient officers in land affairs, little remains to be said, further than will be disclosed by the form of their commissions, presently to be exhibited. It is proper to remark, however, that these officers were sometimes, but not always, empowered to act by deputy; that there are instances of two being commissioned together for a county, and many cases of special appointments for particular surveys. It was a general maxim that they were not to act out of their appointed districts, which sometimes embraced more than one county. The latitude take nby the proprietary's government in these matters was such as naturally flowed from his unrestrained power: it is needless, therefore, to take notice of all the deviations from general rules that occurred under the former system; but, to sum up what concerns the constitution, external as well as internal, of the land office establishment there was, generally speaking, a (deputy) surveyor for each county, whose duty it was to execute the warrants that issued from the land office, according to their locations if they contained any, and, if not, to make and endorse locations according to the direction of the parties, and then, in their due turn and order, to execute such common or general warrants. There was a register or chief clerk authorised to issue warrants of all kinds under the seal of office, that is to say, warrants of resurvey, of escheat, and on the proclamation, upon special orders grounded on the petitions of the parties; and, original warrants for determinate quantities of land, cultivated or otherwise, upon common orders or titlings from the proprietary's chief agent. The next component part of the establishment was the office of examiner general, the duties of which have been explained as far as there are means of doing it. It will be seen by the regulations heretofore inserted that in some instances warrants were returned to that office direct-

ly by the surveyors; in others that they went in the first instance to the land office, the council, &c. Always, however, before being placed on file in the office, they passed through the hands of the examiner, and, if approved by him they were received to be recorded and patented; if not, they were returned to the surveyor for correction, and when amended were submitted again to examination. Concerning the surveyor general, I have nothing to add, nor any thing relative to the judges except that they were in all cases of dispute in the land office to be assisted in their determinations by the chancellor, who was, from the time of that arrangement, no other than the governor of the province. The changes, therefore, in regard to the authority of judging and deciding land office disputes were more in form than substance, and the power ended nearly where it began, for, even when the board of revenue claimed a right to act on appeals from the decisions of the judges of the land office, the governor was at the head of that board, and nothing of moment was done without his assent. The judges were, in fact, but executive officers charged with the direction of an establishment of great importance to the proprietary: the office was theirs, and not that of the chief clerk, who was commissioned by them, and had nothing of the character of a public officer but the power of attesting copies with his name joined to the seal of office. Warrants were signed by the judges, and the fees received for their use. In any attempt therefore to compare the former with the present establishment, the *judges and registers* of the land office will be found to have occupied the place now held by the register rather than that assigned to the chancellor as judge of the land office, but still with so many circumstances of difference that it is not worth while to pursue the analogy; having therefore, as I presume, described the *organization* of the land office establishment as clearly as so equivocal and complicated a system would admit of, I shall wind up the first part of this undertaking by some general and summary observations concerning the ancient practice.

The various instructions, orders, commissions, and examples that have been exhibited leave but little to be said, except by way of recapitulation, concerning the rules of the land office under the proprietary government, nor are there any means of stating them in the abstract but by inference from those documents, as there is not a record, or even a memorandum, left in the office, purporting to lay down or explain its rules of practice. The only matter which I can perceive not to have been sufficiently explained in the preced-

ing chapter, is what concerns the privileges and operation of the different kinds of warrants in respect of priority, preference, and location. The rise of precise location in special warrants of vacant cultivation is somewhat difficult to trace, from the insensible gradation to it from the loose or vague locations which these warrants originally contained: from the period, however, of the restoration of the government to the proprietary in 1715, special warrants appear to have been located in the office, with the same precision as they are at present, and with the same effect of binding the land therein specified from the operation of later warrants for the time that they were to continue in force.—The remarks that have been heretofore made upon the duration and renewal of warrants apply but to the early periods of the province, but the succeeding regulations in those and many other particulars may be traced in the instructions, &c. since inserted. The practice at large will be best explained by drawing it into a few general maxims, such as I believe were received and established in the latter period of the proprietary government.

It has been seen that there were five kinds of warrants exclusive of the warrant for surplus which had been discontinued: to wit, common warrants, special warrants of vacant cultivation, warrants of resurvey, escheat warrants, and warrants on the proclamation.

Common warrants could affect only such vacant land as was waste, uncultivated, and new in every respect: They could not, in strictness, affect land (though not cultivated or improved) which had ever been regularly surveyed: they received no location in the office, but were located by the surveyor, and *bound* the land from the date of such location.

Special warrants contained a location in the body of them, and therefore bound the land *instanter*, always supposing that the location was such as described the land intended in a manner (c) not to be easily mistaken, or applied equally to other land.

Warrants of resurvey were held also to contain a binding location in the body of them in respect to vacant land proposed to be added, though this doctrine, I learn from good authority, had been subject to doubt, and decided in various ways; for, the privilege of binding, for a given term, from other surveys all the vacant land which might, by an extensive continuity, be deemed contiguous to the originals, while the party was not eventually obliged to take the whole of that

(c) I am not authorised to lay this down as an absolute rule, but it seems a natural and reasonable condition attending the privilege obtained by location, and from the general precision of locations under the former government I believe that such was the construction. It has been established by a decision under the present government.

land, was thought unequal, and detrimental to the proprietary's interest: It was objected to this privilege that some further act was necessary; that is, some direction to the surveyor; because, without direction as to the quantity of vacant land to be added he would not proceed to execute the warrant, whereas, on a special warrant he could act without further direction. This point appears to have been settled by the instructions of the board of revenue in 1768, by which the party lost his privilege under a warrant of resurvey unless he made a second location, by declaring his intention to the surveyor within eight months after the date of the warrant. Warrants of resurvey were therefore finally held, under this restriction, to bind all contiguous vacancy.

Escheat warrants had, in respect to vacancy, the general qualities of warrants of resurvey: they operated only on land which had been *both surveyed and patented;* for, a right could not be deemed to revert or fall back to the proprietary where none had been granted, and a certificate unpatented vested no conclusive title in its owner. The person who first obtained this warrant had a preference, as it contained, in its body, a precise location.

Proclamation warrants could operate only on land which had been surveyed, but not patented:—they, also, had the usual privileges of warrants of resurvey, not of necessity, but because the proprietary for greater encouragement thought proper to attach those privileges to them. They could not be taken by or for the use of the person owning the certificate on which they were founded. All warrants were under the same rules as to the periods of execution, return, &c.

Common and special warrants were, by the long standing rules of the office, not to be exceeded: Where this was done, the certificate was void if done by the direction of the party; if by the surveyor without direction, the certificate was to be amended. This rule, however, appears latterly not to have been strictly enforced, as, provision is made in the instructions of the board of revenue for the case of a warrant's being exceeded, by a direction that where it so happened a patent should not issue until the excess of the warrant was paid for. It is to be remarked that, with exception of the various conditional warrants, and warrants on credit, allowed at different periods to be issued, particularly for settling the frontier parts of the province, it was the system of the proprietary government that the caution on these warrants should be paid at the time of taking them out:—on warrants of resurvey, including those of escheat and proclamation, which were to affect an indeterminate quantity of vacant land, this could not be done, but the composition was to be paid on return of the certificates.

In regard to the assignment and *splitting* of warrants, I have found no instructions that rescind those of the 12th of September, 1712, to Charles Carroll, Esq. well known by their prohibiting *calls*, and confining surveyors to course and distance after the first boundary. By these instructions it will be seen that the proprietary complained of the effect upon his interest, and the confusion occasioned by what he terms "*little petty assignments*," and directs that no warrant should for the future be *parcelled out* by assignment, but that a whole warrant might be assigned, or, after a survey made by virtue of part of it, the remainder might be assigned; which rule he further directs to be inserted in all warrants. It is not perceived that such a proviso was introduced into the form of warrants, and, if the rule was enforced at all it must be acknowledged not to have been observed in the latter period of the province, as a single warrant appears in many cases to have been used for several surveys. Nevertheless, the instructions of 1712 were in force; for, in all subsequent instructions relative to the operations of the land office there is an express confirmation of former ones so far as they are not repugnant to those of later date; and, although warrants continued to be split by assignments, as might well be expected when the persons in authority were, almost without exception, among the greatest takers up of land in the province, I do not find that the practice of exceeding the quantity of a common or special warrant was ever sanctioned, further than as a thing which might necessarily happen in some cases, and which the proprietary's agent, getting immediately paid for the excess, and knowing it to be of no advantage to let small slips of land remain vacant for the sake of a rule, did not think proper to question. Under the proproprietary government therefore, notwithstanding the deviations that have been noticed, warrants were construed according to their plain import, that is, if a warrant was taken for 100 acres, it was not meant that 1000 might be surveyed, still less was it understood that this warrant might be parcelled out to ten persons, and a survey made for each of them of a greater quantity than the whole warrant expressed. As to assignments, independent of exceeding the quantity of the warrant, there must have been a difficulty in restraining them, as land warrant, by which I mean warrant for a determinate quantity of land, was the holder's property, acquired with his money, or was, in other words, so much money belonging to him in the proprietary's hands. The natural right of transferring property, in whole or in part, seemed to oppose any absolute regulation respecting assignments, and the rule laid down by the instructions already alluded to, if enforced at all, fell afterwards into neglect. Perhaps these instructions

which were among the last acts of the second proprietary, and given after an experience of fifty years in the affairs of the province, would have been better observed if he had not died soon after issuing them.

No *stringing* was to be allowed in resurveys, or other surveys: a string was understood to be where a contiguity was attempted to be made by a mathematical line. There was also another kind of string, i. e. where the space between the lines was not broad enough, but of this as before stated, the examiner was to judge.

Concerning the form or shape of surveys a kind of general rule will be observed in the 6th article of the instructions of the board of revenue to surveyors: but it was merely an old regulation kept up without any object for its application at the time when those instructions were issued. It will have been seen by some of the early instructions that surveys were to be as nearly as possible in the shape of parallelogram, and that the lines run upon the water side should not exceed the length of fifty poles for every fifty acres to be surveyed. We have shewn an instance of the enforcement of this last mentioned rule, and it was, in the early times, of real consequence, in giving the advantage of the water to as many plantations as possible. How long it continued to be exactly observed cannot well be ascertained; but, in the middle period of the proprietary government, as well as in the first, it was a general rule that the *long lines* of surveys were not to be run upon the water side, of which some proofs will be shewn among the documents and passages to be attached to this chapter. In later times, the borders of rivers, &c. being generally occupied, and the circumstances of the country altogether changed, there was little occasion for those regulations, and the last of them may be supposed to have fallen altogether into disuse. The other was kept up in form, and it is even at this moment among the instructions to surveyors that their surveys shall be as *regular and square* as possible—but this, I believe, is but a dead letter, for the shapes of surveys must, for many years past, have been governed, with few exceptions, merely by the lines of the surrounding tracts, as appears very plainly from the immense number of courses in modern surveys compared with those of more distant periods.

It was a general maxim that no one was to suffer by the default of the public officers: particular regulations occur in the early periods, limiting the time for prosecuting surveyors for neglect, &c. but none that are late enough to be deemed in force at the end of the proprietary government. The general rule however was understood still to prevail.

Where a minor's interest appeared to be affected, the matter, whatever it might be, was generally put off until he became of age; but this did not prevent resurveys or other proceedings evidently in favour of the minor.

A caveat might be entered, but could not be brought to hearing, before the return of a certificate:—the duration of caveats was formerly for ten, but by the last instructions, for six months, and they could not after that time be renewed except upon special reasons.

Finally, the legal title to land, under a patent, was held in the land office, according to such rights as I have been able to obtain, to commence with the date of the certificate; the date of the warrant, in a question of eldership between two patents, not being regarded. Many endeavours were therefore used to get the first certificate, and it behoved a person having the first warrant, or being otherwise entitled to a survey, to enter a caveat, and stop the issuing of his adversary's patent.

In regard to formal adjudications, expressly establishing any of the principles here laid down, the land office does not furnish them, and I purposely avoid meddling with the decisions of courts of law or equity: the records afford, indeed, abundance of cases in which, on petition and summary hearing, questions of preference and right have been decided in the land office; but, few even of these appear in that period of the proprietary's government which, as coming near to the present times, would be the most interesting; and decrees at large, stating and summing up the merits of contests, and settling important principles, such as have been in practice under the present government, are scarcely to be found in any part of the land records. Besides which, the *minute* books, which should shew the progress of controversies from the entry of caveats to the final adjudications, being wholly lost, it would be extremely difficult to get together the scattered parts of cases, so as to make a report of any importance:—I shall therefore, after a few further general remarks conclude my account of the history and ancient practice of the land office. The proprietary's officers it would appear, did not know exactly at what point to stop, as warrants were issued under his authority as late as May 1777, and patents under the great seal nearly to the same time. The declaration of independence unquestionably dissolved the proprietary right in matters of government: Mr. Eden withdrew about the period of that declaration; but, in the same manner as had been practiced in the temporary revolutions of the province, the proprietary's officers continued the operations of the land office, until, through the official

interposition of the governor and council appointed under the new constitution. It was about the 15th of May 1777, given up to Mr. Peale the register before mentioned ; and the property of Mr. Harford, including, besides manors, and reserves, all the land remaining vacant or ungranted in the newly erected state of Maryland, if it had not from the very nature and circumstances of the revolution become that of the state, as succeeding to the sovereignty and the territorial rights of the proprietary, fell at least under the general confiscation of 1800, the more certainly as Mr. Harford took no step to place himself within any of the excepting provisions of the confiscating act. The land office therefore, together with the main object of its operations, namely, the land of all descriptions to which a complete title from or under some one of the proprietaries had not been granted, was now in the possession of the state of Maryland. Upon the death of Mr. Peale in 1778, the appointment of register was conferred on Mr. John Callahan, in whose hands the office, after having been closed, with exception of a few *renewals* and *escheat warrants*, to be noticed in commencing our account of the actual practice, was fully opened in the beginning of the year 1782, under an act of assembly for that purpose, passed at the session immediately preceding. At the close of the war Mr. Harford came over from England, and petitioned the general assembly for restitution of, or compensation for, his property ; which, after counsel had been heard at the bar of the house of delegates in support of his application, was positively refused. An attempt was afterwards made to establish his claim at least to quit rents as theretofore notwithstanding that they had been abolished forever by an act of the new assembly passed in the year 1780 ; but this met with the same fate. Mr. Harford, after residing about two years in Maryland, returned to England, and is understood to have received a liberal, though certainly not a full, indemnification from the British government for his losses. A slice which he got off the state's (*d*) bank stock, upon its being recovered, in 1805, terminated this gentleman's claims upon, and relation with, this country.

In regard to the land office, the new government appears to have taken no decisive step until the time at which we have stated it to have been surrendered, and nothing proves the singular and disputable character of this establishment more than that patents should have continued to issue therefrom,

(*d*) In writing chiefly for the citizens of Maryland, it is not necessary to say any thing further upon a subject so well understood as that of the stock which we held in the bank of England. Mr. Harford was among the claimants whose pretensions so long obstructed the recovery. His claim was compromised by £10,000, the sacrifice was a prudent one, and he was, I suppose, not to blame in exacting it.

signed by the president of the proprietary's council, with the addition of "commander in chief in and over the *province*, of Maryland," for nine or ten months after the name and the *subordinate* nature of a province had been solemnly renounced in the declaration of American independence, and even after there were actually a governor and council elected, qualified, and acting under the state consitution. However, there was little difficulty, when the government interfered, which it did, as soon as Mr. Peale had given bond for the faithful discharge of his trust ;—and, on a letter of governor Johnson, in council, to Benedict Calvert, Esq. the surviving judge of the land office, dated the 13th of May 1777, the office and records, which had been refused to an application by verbal message from Mr. Peale, were delivered up, so that the register entered upon his functions on the 15th.—The only remaining incident relative to this subject is that governor Eden, who returned to Maryland in company with Mr. Harford, undertook to perfect by his signature, in the year 1804, several patents which had been left unsigned in his secretary's office upon his quitting the country in 1776. This matter was discovered by the vigilance of Mr. Callahan, and occasioned a formal demand by the governor and council on sir Robert Eden concerning any *idea or supposition of a rightful authority* with which he might have taken such a liberty. Sir Robert gave, in return, a candid explanation of his conduct, stating, that he had signed no patents but what ought to have been signed before he withdrew from the government, the completing of which he had therefore considered as a debt due from him personally to the parties, and disclaiming any notion of a power remaining with him to perform that or other public acts. From this time the business of the land office was carried on, agreeably to the established forms and usages with which Mr. Callahan had been long enough employed there to be well acquainted, and in conformity with the acts of assembly which soon began to regulate its proceedings, without further interruption from the proprietary government.

With some documents and passages that have been reserved to illustrate this chapter I shall insert the instructions of the board of revenue to the judges of the land office, and to the deputy surveyors: this is the first body of instructions which I have found to the last mentioned officers, and I am confident that there are no earlier ones on record. It appears nevertheless that there had been other instructions, and the passages in the journal of the board of revenue which disclose that fact deserve on several accounts to be noticed. The instructions framed by the board of revenue were transmitted to the surveyor general of each shore, to be by him forward-

ed to the deputy surveyors: a letter was, in consequence, received, in August 1769, by a member of that board, from Benjamin Young, Esq. surveyor general of the Eastern Shore, in which he stated that several of the deputies there had refused to qualify under those instructions. The precise ground of their objection does not appear, as Mr. Young, instead of explaining it himself, introduces for that purpose a letter from one of those deputy surveyors, inveighing with great violence against the instructions, and more particularly against the oath, without stating the points in which the former were deemed exceptionable. Mr. Young apprehending that many warrants would go out of date for want of surveyors to execute them, and fearful that the evil might be attributed to him unless he could shelter himself under the authority of those who had issued those instructions, desires to know who those gentlemen are, in order that he may, in case of *persecution* by "the enemies to government," fly to them for support and redress; declaring at the same time that he does not perfectly know them, "never having had their names," but only knows them collectively as the board of revenue.

The board upon considering this and other communications upon the same subject, and upon a re-examination and comparison of the instructions in question with those under which the deputy surveyors *had theretofore acted*, find them in substance the same, except the 22d article (to which they affirm no real objections can lie) and also the oath therein prescribed; which latter "being solely intended to prevent "any undue measures being pursued by the said deputies to "the prejudice of the public," the board determine that no alteration ought to be made therein, or in the instructions.

It appears therefore, as I have said, that the were instructions to surveyors prior to those of the board of revenue, but from the disturbance occasioned by these it would seem that the preceeding ones had fallen into neglect, the surveyors not being bound by a special oath to their observance. The loss of those former instructions, since these are substantially the same, is of no consequence, except that we cannot ascertain their date, further than that it was subsequent to the rise of proclamation warrants. I shall now insert these and all remaining documents belonging to the ancient practice, and shall add to this last collection suc miscellaneous passages and references, hitherto omitted, as may serve to throw further light on any part of the preceding enquiries.

" *Instructions to be observed and pursued by the judges of his lordship's land office.*

" 1st. You shall not permit any warrant to issue or other act or thing to be done in your office, which may intitle any person to land within this province until the agent and receiver general shall have certified the caution money to have been paid.

" 2d. You shall not suffer any patent to issue upon any certificate founded either upon warrants of resurvey, escheat warrants, or warrants under the proclamation or any special warrant, until the agent has given a proper receipt for the caution money, as well for the value of the improvements and arrearages of rent, and his excellency the governor and chancellor has signified his approbation, nor are to suffer patents to issue upon certificates returned by virtue of a common or special warrant if there is more land included in the survey than the party had warrant for until the excess is paid for.

" 3d. You are to keep a file in your office for the titlings given by the agent impowering you to issue either common or special warrants; you are also to keep a book for the purpose of recording all these titlings with the name of the person to whom the warrant is granted and for what number of acres. You have also to have colums in the same book to distinguish the money paid upon certificates of all sorts and return the said file and book every year into the revenue office for examination.

" 4th. When a warrant for a determinate number of acres is obtained, as more than is expressed is some time surveyed, so is a lesser number of acres, and the party after applying part of his warrant to one survey is at liberty afterwards to apply the residue till the whole warrant is exhausted in other surveys, and it not unfrequently happens that warrants for a determinate number of acres are applied to make good the consideration becoming due on certificates of surveys made in pursuance of warrants for an indeterminate number of acres, in consequence of this connexion between the agent and land office, the required check may be easily formed.

" 5th. You shall not pass any lands hereafter to be granted, unto our secretary, agent, commissary general, judge of the land office or attorney general or their wives and children, until special leave shall be had and obtained from his lordship or the lieutentent governor for the time being, but that any of the said officers may by warrant and location have a survey made to entitle themselves to the preference of lands liable to be granted.

" 6th. You shall not issue any warrant to yourself, or family, unless the same is signed by the lieutenant governor and chancellor.

" 7th. You shall keep authentic records of your proceedings.

" 8th. You are to return yearly to the keeper or keepers of the rent roll, for the time being by the first day of February an exact list of all the patents made out by you in the preceding year.

" 9th. There shall be in all warrants a clause inserted, by way of proviso, that the grant shall be taken out within the space of two years from the date of the warrant, which said clause you are hereby enjoined so strictly to observe as not to suffer any renewal of the said warrant after such time, or any grant to issue contrary to the true intent and meaning thereof.

" 10th. And to encourage the discovery of escheat lands or houses, one third part of the value or worth which shall be set on such lands and houses, shall be allowed to any person who shall first discover the same in the composition or purchase money, which he ought to pay for the same, and that such discoverer shall have the preference or preemption without exception.

" 11th. That no caveat be permitted to continue longer than six months, nor be renewed after that time unless upon very special circumstances.

" 12th. You shall not suffer a patent to issue upon any certificate that has not been returned three months into your office.

" 13th. In case of warrants of resurvey hereafter to be issued, notwithstanding the general power therein to add all or any contiguous vacancy; yet unless the party who shall obtain the same, do make a particular location thereof on the land and number of acres he shall intend to secure, within eight months after the date of such warrants, such person shall not have any preference before any person interested in any other warrant on which a prior survey shall be made.

" 14th. No warrant on the proclamation to be granted to any person or persons, who shall not first make oath, that he doth not apply for such warrant for, or on the behalf of, in trust for, or upon any agreement with any person or persons, that was, or were interested in the former warrants, or the survey thereon to be affected by the said proclamation.

" 15th. If upon any determination, or caveat, or otherwise, any person interested shall give notice in your office of his intention to appeal therefrom to the board of revenue, and shall within two days after such determination, accord-

ingly enter his appeal with the clerk of the revenue board fully explaining the reasons, and certifying the facts, on which he shall found his appeal. You are not to carry such determination into execution until such appeal be dismissed by the said board.

Signed, per order of the board of revenue.

JOHN CLAPHAM, Clk."

December 19th, 1768."

LIBER W. S. No. 12, fol. 214.

" *Orders and instructions to be observed and pursued by deputy surveyor of county, in the province of Maryland.*

" OATH OF OFFICE.

" I will truly and faithfully execute my office of deputy surveyor of county, and observe and perform the rules and instructions given me in charge for the same, to the best of my skill and judgment, and will not take, bargain or agree for any manner of estate, interest or profit, in, of, or from any warrant, or location, or survey thereon, (except the usual and accustomed fees) that shall be executed by myself, or any assistant appointed by me; nor will I return any certificate of any survey wherein my assistant shall to my knowledge, or belief, be in any manner interested, or of any survey not actually made by myself, or not returned to me by my assistant, duly appointed and qualified, as actually made by him; nor will I sell or assign to any person or persons any warrant, or share or part of any warrant to be executed in the said county, whilst I shall hold the office of deputy surveyor therein.

" The taking of the above oath to be certified by some magistrate, and lodged in the revenue office.

" OATH OF THE ASSISTANT.

" I will truly and faithfully execute my duty as assistant to deputy surveyor of county, and observe and perform the rules and instructions given me in charge for the same, to the best of my skill and judgement, and will not take, bargain, or agree for any manner of estate, interest, or profit in, of, or from, any warrant, location, or survey thereon (my just dues of office excepted) that shall be executed in the said county, during the time I shall act as assistant as aforesaid; nor will I return any lines, or survey, as run or made by myself, unless such as shall actually be so run, or made; nor will I sell or assign any warrant, or share, or part of any warrant to be executed in the said county, during the time of my acting as assistant as aforesaid.

" The said oath to be certified as aforesaid.

" 1st. Upon receipt of any common warrant you are to note down in a book (to be kept by you for that purpose) the time of your receiving it, the quantity of acres included therein, the date thereof, and on what place the person obtaining it, locates the same warrant; and when any person offers a warrant for location on land upon which some other person has already entered a warrant to affect the same, you shall, if required, produce your book of entries and shew him that entry or location, if such demand be made at your house or any other place where your book of entries shall be.

" 2nd. You are upon all primitive surveys to describe your beginning as well and full as the thing will admit of, and then only mention course and distance to the last course, which is always to be thus expressed: then with a straight line to the first beginning.

" 3d. You are by no means to survey or return a certificate, for a greater number of acres than are expressed in your warrant, unless to include the whole of such vacancy as shall lay between any two or more tracts of land, giving this a reason for having exceeded the quantity mentioned in your warrant.

4th. As soon as you execute any warrant or any part thereof, you are to indorse on the back of your warrant, that it is executed, or that such part thereof (which you must specify) is executed; you are also to indorse the name, or names, of the land to which the warrant is applied and sign the same indorsement.

" 6th. If any person assigns to another a warrant, or part of a warrant, you are to note it down on the back of the warrant, and also before you execute any warrant, or lay out any land by virtue of such assignments, you are to have an original assignment on a separate paper, to be by you returned to the land office, with your certificate of such survey.

" 6th. You are to make all your surveys as regular and square as you possibly can, and by no means unite one bit or spot to another by a string, or line; and when it can be done, you are always to make the line or lines of one tract the line or lines of another, that no small parcel, or spots of vacant land may be left out.

" 7th. You are not to execute any warrant after it is out of date: and, whereas it is said to have been a frequent practice for persons having warrants to carry surveyors to execute the same, and then after they have run a line or two to break off on pretence of wanting better information concerning the bounds of adjacent tracts, and by this means let such war-

rants run out of date, and afterwards compleat such survey and return certificate thereof before the two years expire, you are to observe that such beginning to run or execute a warrant is to be deemed a nullity, provided such warrant actually run out of date before the survey shall be completed and certificate returned according to the obvious construction of such warrant; and in case the party does not renew it, as if no such beginning had been made, you are to consider such warrants as out of date and expired, and give the preference to any subsequent warrant, which shall come to your hands to affect such land agreeable to the preceding direction.

" 8th. Whereas resurveys are often made to throw, or leave, out land that is suggested to be within older surveys, and great abuses have been committed by turning out indifferent land (although it lay not in elder surveys or prior patented tracts) and taking in good land in lieu thereof, you are when a warrant for making such resurvey is hereafter brought to you, first to resurvey according to its ancient metes and bounds the more ancient tract (in which part of the tract that you are required by the warrant put into your hands to resurvey, shall be said to be included, and in your certificate you are to insert the name of such more ancient tract, the name of the patentee thereof, and the time when it was taken up) after which you are to resurvey the tract, for resurveying which, the warrant put into your hands shall have been granted. This mode of proceeding will enable you to discover certainly, whether any and what part of the younger tract is included in, and taken away by the older survey, and you are always by proper words to denote and distinguish the same in your plot, and in your certificate; after alledging that you have surveyed the several tracts separately according to their ancient metes and bounds (beginning with the most ancient) and that you have added acres of vacant land (in case any vacancy to be added by virtue of the before mentioned warrant of resurvey) you are then to describe or give the outlines of such resurvey, which you are by the warrant directed to make, and for which patent is to be issued (saying) " lastly beginning for the out lines of the " resurvey, by virtue of the before mentioned warrant at," &c. and at the bottom of your certificate you are to give tables of courses (referring by figures to the plot) viz: the courses of the more ancient tract, or tracts into which it is alledged that such younger survey to be resurveyed does run, the courses of the former survey now to be resurveyed, the courses of the vacancy, or vacancies added, and lastly, the courses of the resurvey, or land for which patent is now to issue, and when you rectify any error in such former survey,

now to be resurveyed and patented, you are in your certificate to note and mention what the error was, to what it was owing and how you have amended the same, and where there shall be any surplusage or any deficiency discovered on a resurvey. You are to mention in your certificate, what is such surplusage, or deficiency, and how you apprehend such surplusage or deficiency happened.

" 9th. You are when ordered to resurvey two or more tracts into one, they being contiguous to each other, first to resurvey them severally according to their respective ancient metes and bounds: and you are to insert in the plott, as well as in your certificate, their original names and quantity of acres, within their respective lines, and in your certificate say " lastly beginning for the out lines of the resurvey made by " virtue of the before mentioned warrant at" &c. and give the courses thereof.

" 10th. In resurveying of escheat land, you are to lay it down according to its ancient metes and bounds: if the party be not satisfied therewith, the land must lie for any other who will take it on those terms; and you are to be very particular in your certificate, as to the number of acres, kind and quality of the improvements, as well as the quality of the land; if it be alledged that part of it lies within an elder survey, you are in that case to observe the directions before given in the eighth article of these instructions.

" 11th. Where a party applying for a resurvey shall be possessed in fee of part of a tract only, on the party's producing an attested copy from the land office of the courses and distances of such original tract, of which, the land you are required by the warrant put into your hands to resurvey, shall be said to be a part, you are to follow (as occasion be) the directions already given in the eighth, ninth and tenth articles of these instructions, with this difference, that where they direct the resurveying the original tract according to its ancient meets and bounds, you are in this case to resurvey no more of the original tract, than such a part of it as the warrant put into your hands shall direct, with a line or lines from the first or other certain boundary of said original tract, so as to ascertain that the quantity thus claimed, doth really lie within the bounds of the tract, of which it is said to be a part; and in your certificate after alledging that you have run such line, or lines from the first or other certain boundary of such original tract, (mentioning the tract, such boundary, and the patentee thereof) you are to declare that the whole quantity, so claimed, or such a part of it (mentioning the quantity) now returned by you, doth lie within the bounds of said original tract, when in your certificate you are to describe the outlines of the resurvey, for which patent is to be

issued—say, "beginning (or lastly, beginning as the case may be) for the out lines of the resurvey, by virtue of the beforementioned warrant—at the end of perches and links in the line (or course) of," with regard to all other particulars, you are to observe the directions given you by these instructions.

"12th. You are (when directed to include vacancy) to take in the whole, except the quantity be more than the petitioner chuses to take up, in which case the remainder is not to be less than one hundred acres, and that to be left in a body intire, for you are by no means to leave small parcels in slipes, or otherwise, nor are you to run in any elder survey, or run a string or line across any surveyed land whatever, (although it should belong to the person obtaining the warrant of resurvey) in order to include vacancy; but such vacancy shall be taken up by a common or other special warrant, as the case may require, unless the party resurveys the tract, or tracts, (being his own) to which it is adjoining, be it in one or more parcels. In your certificate (immediately before you begin to describe the out lines of the resurvey for which patent is to issue) you are to in insert the quantity of vacant land so taken up—on the plot returned with the certificate where vacancy shall be added, you are to insert the words ("vacancy, acres,") if it be in more parcels than one, then in each of the said parcels insert (1st. 2d. or 3d.) vacancy acres: also in your plot on the out side of the lines of each vacancy, you are to insert the names of the lands, or of the owners of the several tracts surrounding it; and at the bottom of your certificate, you are to give tables of courses, referring by figure to the plot, as before directed.

"13th. You are not upon resurveying any original, or former survey of a tract of land, to call in your certificate of resurvey for a boundary, or line of any other tract of land, unless such boundary, or line be expressly called for in the certificate of such original, or former survey; and where you propose running to such boundary, or line as being called for in such original, or former certificate, you are hereby required to measure the true distance to such boundary, or line; and when you are to run with such or any other particular line of a former survey, you are actually to measure the true distance that you shall run with such line, and you are to be particularly careful that you are not imposed on with regard to the truth of such boundary, or course, or length of such line: nor are you to return to the land office any plot, or certificate for land of which either you, or your assistant have not actually measured every line.

"14th. You are not to locate any common warrant (or execute a warrant of resurvey to include vacancy) on his lord

ship's manors or on any part thereof unless a particular special warrant be to you directed for that purpose, nor shall you locate any common warrant (or execute a warrant of resurvey to include vacancy) on lands lying within three miles of any of his lordship's manors, except as above excepted, nor on any of his lordship's revenues.

" 15th. You are on all surveys, whether special or under proclamation when you include cultivated land to be very particular in your certificate as to the number, kind, and quality of the improvements.

" 16th. You are upon discovery of vacant land rough, or cultivated, or land forfeited to his lordship, adjoining or contiguous to any of his manor lands or reserves to give notice to the land office, that a proper warrant may be issued in order to its being added thereto.

" 17th. In resurveying old tracts, whereof part may be found to lie in the water, you are to be careful in certifying whether it is likely to have been washed away, or to have been an error in the original survey.

" 18th. As there are directions given in the eighth article of these instructions, for many particulars that are not elsewhere taken notice of you are at all times, in case of doubt, to refer thereto.

" 19th. You are at all times to give the strictest attention to the directions contained in the respective warrants issued to you, out of the land office, paying due regard however to these instructions.

" 20th. You shall endeavour to discover whether any person, or persons are in the possession of, or occupy lands in any part of the county of which you are surveyor that doth not pay rent for the same, or others not having procured patent, or leave for the same from his lordship's agent or the land office ; and in case you make any such discovery, you are to advise the governor, or his lordship's receiver general thereof.

" 21st. You are not to suffer any person to run out the lines of, or execute any warrant for you, unless an assistant properly qualified, and to prevent all disputes about the priority of entries, or locations of land, no assistant shall presume to receive or enter the location of any warrant, whatsoever ; that power being solely rested in the deputy surveyor, nor shall you appoint any such assistant till he shall be approved of by the surveyor general, and when you apply for such approbation you are to set forth the reasons that induce you to make such application, and after your assistant (being approved of by the surveyor general) shall have entered into bond with two sufficient sureties to you, your executors, for the

true and faithful execution of his trust, or employment, and shall have qualified to this effect; that he will truly and faithfully, to the best of his knowledge and power, discharge and execute such his trust and employment, you are forthwith to return a certificate of such his qualification to the surveyor general whose approbation, or permission shall be expressed or recited in the order or appointment, which you make and deliver to your assistant; and you are also to give him a copy of these your instructions.

" 22d. Whereas the following being an article of instructions, delivered to the judges of the land office, viz. " in case of warrants of resurvey hereafter to be issued, notwithstanding the general power therein to add all or any contiguous vacancy; yet, unless the party who shall obtain the same make a particular location thereof on the land and number of acres he shall intend to secure, within eight months after the date of such warrants, such person shall not have any preference before any person interested in any other warrant, on which a prior survey shall be made," you are hereby required to act in conformity therewith.

" 23d. In case you shall afterwards dismiss your assistant, you are to give notice thereof to the surveyor general, with your reasons for so doing."

Copied from the journal of proceedings of the board of revenue, at the sitting of December 5th, 1768.

" COMMISSION IN 1674, TO A DEPUTY SURVEYOR.

" Baker Brooke, Esq. surveyor generall of the province of Maryland, to Charles James, of the county of Cecill, in the said province of Maryland, gent. greeting: Whereas Cecilius, absolute lord and proprietary of the provinces of Maryland and Avalon, hath by a commission under his hand and greater seal at arms, bearing date the first day of August, in the fortieth year of his dominion over the said province, and in the year of our Lord one thousand six hundred seventy one, deputed, constituted and appointed me surveyor generall of this province, and hath given and granted unto me the said Baker Brooke all fees, dues, vayles, regards profitts, and perquisites to the said office belonging, or any wayes arising or becoming due, and the same to execute by myself or any sufficient deputy or deputies, and I reposing speciall trust and confidence in you, the said Charles James, in your art and skill in laying out men's lands, running out of lines, and in the art of surveying by virtue of the commission aforementioned from his lordship as aforesaid have deputed, constituted and appointed, and by these presents doe depute, constitute and appoint you the said Charles James, to be a

deputy surveyor in the countyes of Baltimore and Cecill; and further being very well assured of your skill, ability, honesty and integrity, have deputed, constituted and appointed, and by these presents doe depute, constitute and appoint you the said Charles James to be my deputy, and in resurveying and laying out lands that are allready laid out, and where the partie concerned may suppose there is an error in the former survey, in any part of the countyes aforesaid, in as full and ample power as I myself may, might or could do if I were personally present, to doe and perform the same; and doe hereby further give you the said Charles James my full power, strength and authority to run out men's lines, to survey lands according to warrant or patent, and to use and exercise the office of a deputy surveyor in full and ample manner in the countyes of Baltimore and Cecill aforesaid, and also to resurvey land in any part of the countyes aforesaid, without lett, hindrance, disturbance or molestation of any person whatsoever, To have and to hold the said office of deputy surveyor in Baltimore and Cecill aforesaid and resurvey in any part of the countyes as aforesaid, during pleasure provided allways that you the said Charles James shall receive, obey and comply with such orders and instructions as from time to time I the said Baker Brooke, shall under my hand, order appoint and direct; and moreover, it is and be it hereby further provided, that you the said Charles James shall be contented with the one-half of the fees or profits arising or becoming due by reason or means of the said imployment hereby granted unto you, and shall be accomptable to me the said Baker Brooke for the other halfe, once every year at least. Given under my hand and seal, this twenty-eighth day of July, in the three and fortieth year of the dominion of the right honourable Cecililus, &c. in and over this province of Maryland, annoq. domini, one thousand six hundred seventy and four."

LIBER No. 15, fol. 203.

"*Licence to a Surveyor to act by Deputy.*

"Whereas I have by commission under my hand and seale consituted, ordained and appointed you Robert Jones, gentleman, to be my deputy surveyor for Calvert county, and considering that by reason of your own indisposition often times happening, and other public concerns sometimes occurring, requiring your attendance in other parts of the province, soe that you cannot be present att all times to execute such warrants as may be granted for the surveyor resurvey, of lands within the said county, where you are deputed within the time limitted in such warrants, you are

therefore hereby authorized and empowered to take to your assistance such person or persons as you shall think fitt to make choice of, capable for such purpose, in your absence, or in case of your indisposition, to survey or resurvey any lands within the said county, by vertue of any such warrants as aforesain, hereby ratifying and confirming whatever such person or persons to be by you deputed by vertue hereof, in as full and ample manner as if done by yourselfe, or if I were then and there personally present to doe and performe the same, Provided that all certificates of such survey or resurvey as aforesaid, made by such your deputy or depntyes assistant as aforesaid be first viewed, approved of and signed by the said Robert Jones, as good and authentick before they be returned to be recorded in the office as is usuall; and for soe doing this shall be your warrant. Given under my hand and seale, this 18th day of May, anno domini 1683.

LOCUS SEGILI.

C. BALTIMORE.

"*To Robert Jones, gent. my deputy surveyor for Calvert county.—These*"

LIBER W. C. No. 4, fol. 344.

"*Commission* 1717, *to the Surveyor General of the Western Shore.*

"MARYLAND, *ss.*

"*To all persons to whom these presents shall come, greeting:*

"Whereas the right honourable Charles, absolute lord and proprietary of the provinces of Maryland and Avalon, lord baron of Baltimore, &c. and the right honourable Francis lord Guilford, his lordship's noble guardian, have by their inttructions to me, John Hart, Esq. his lordship's lieutenant governor within this province, bearing date at the city of London, the twentieth day of February in the year of our Lord, one thousand seven hundred and sixteen, directed me to authorise and impower, direct and appoint Thomas Bordley, Esq. surveyor generall of the Western Shore of this province: Know ye therefore, that in pursuance of the said instructions, and by virtue of the power and authority by them to me granted, I have authorised, impowered, directed and appointed, and do by these presents, authorise, impower, direct and appoint the said Thomas Bordley, to be his lordship's surveyor generall of all his lordship's lands, manors, chases, parkes, forrests, woods and underwoods, lying on the western side of the bay of Chesapeake, within the

said province; and also all other land on the said Western Shore, that shall or may be any ways in dispute in respect to the bounds thereof, at the request of any person or persons concerned in such disputes or by virtue of any warrant, order of court, or other legal authority, for the resurvey of any such lands, or the running any lines for the illustration of any matter in controversey: and for the better execution of the powers and authoritys hereby to him the said Thomas Bordley granted; I do hereby further impower him to nominate, constitute and appoint, from time to time, as occasion shall require, sufficient deputies under him, for whose fidelity in the due and legal execution of all such orders and warrants, whether common or speciall, as shall be to him or them directed from his lordship's land office, or by other lawfull authority, according to the direction of such orders or warrants, and the duty of their office; he the said Thomas Bordley shall be answerable, allowing him to take to his own use, and to the use of his deputys, such fees, perquisites and rewards as by any of his lordship's surveyors generall have been accustomed to be taken and received, or might have been by them or any of them lawfully taken and received, and which are and shall be from time to time, agreeable to the laws of the land, To have, hold, use, exercise and enjoy the said office of surveyor general of the Western Shore beforementioned, unto him the said Thomas Bordley, during his lordship's pleasure and no longer, (hereby by virtue of the authority to me granted as aforesaid, revoking, annulling and making void all former commission heretofore by his lordship granted to any person or persons for the executing of all or any the power hereby to the said Thomas Bordley granted. Given under his lordship's greater seal at arms, the twentieth day of May, anno domini one thousand seven hundred and seventeen."

JO. THE GREATER SEAL. HART.

LIBER B. B. fol. 49.

"*At a councill held at the city of St. Maries the first day of December, anno domi.* 1684.

"Ordered that new commissions issue to the several and respective deputy surveyors of the several counties of this province, accordingly as they are hereafter named, to officiate in the surveying and resurveying of lands within their several respective precincts for the inhabitants of this pro-

vince and others requiring the same according to such precepts, orders and warrants as shall be legally and duly obtained and to them respectively directed upon such conditions and terms as formerly such commissions have been granted, the said deputies surveyors to be responsible and pay for the same to his lordship or such person or persons as his lordship shall hereafter appoint to receive the same, in such manner as hath been formerly accustomed to be paid by them respectively for their severall and respective offices, (viz.)

Here follows a list of persons to be commissioned, which it is not necessary to insert; but it is proper to mention that these commissions were issued on occasion of the surveyor general's office becoming vacant by the disqualification of colonel Talbot, in consequence of the misfortune which has heretofore been noticed. The deputy governors were much perplexed about the proper method of proceeding in this emergency, and at first proposed to commission the surveyors for three months only, in which time it was presumable that the proprietary's pleasure would be signified (from England) concerning a successor to Talbot. It will be perceived by the above order that those offices were absolutely sold, as were most others in the province, more especially in the time of the kingly government. The commission below is inserted chiefly to shew what is said about the forms of surveys.

" Richard Beard's comon. depty. survr. of Ann Arundel county. } *Charles absolute lord and proprietary of the province of Maryland and Avalon lord baron of Baltimore, &c.*

" *To Richard Beard of Ann Arundell county, gentleman, greeting*: Out of the especial trust and confidence we have in your truth, fidelity and integrity, as also in your art, skill and knowledge in the art of surveying; we have constituted, ordained and appointed, and by these presents Wee Doe constitute, ordain and appoint you the said Richard Beard to be deputy surveyor of the county aforesaid in its utmost latitude and extent, giveing and granting unto you hereby full power and authority to survey and resurvey lands within the said county, according to such warrants as you shall receive, and in all things to act, doe and perform as to the place and office of deputy surveyor belonging, or as any deputy surveyor may or of right ought to doe; and to receive and take all such profits, fees and perquisites as shall be legally due for the same, according to act of assembly in that case made and provided.

" Provided you shall not at any time make any survey or resurvey contrary to the conditions of plantation of this our province, by laying out the long lands on the water, (unless upon resurveys by your warrant particularly and specially commanded soe to doe, by going according to the ancient metes and bounds) or run within any reserve made for his lordship or otherwise act against the tenor of the said conditions, but shall duly, truly and punctually observe the same

soe farr forth as in you lyes, and is required of you ; neither presume to make any surveys without the bounds or limits hereby assigned you ; for the profits and perquisites whereof you are to be, and shall from time to time be accomptable to such person or persons as wee or our lieutenant generall or his deputies shall think fitt to appoint, upon such conditions and terms as you have already had granted unto you the said place, or that the said place and office of deputy surveyor hath been last enjoined and possessed by, To have and to hold the said place and office of deputy surveyor for Anne Arundel county aforesaid, to you the said Richard Beard, for and during our pleasure or untill wee or our lieutenant generall, or his deputies shall signifie our, his or their mind to the contrary.

" Witness our trusty and well beloved the deputies of our dear son, Benedict Leonard Calvert, Esq. our lieutenant generall of our said province of Maryland, and given under the lesser seale of our said province of Maryland, the first day of December, in the tenth year of our dominion, &c. annoq. dmi. 1684."

LIBER R. R. R. fol. 159.

" *Appointment of examiner general.*

" MARYLAND, *ss.*

" I do hereby authorize and appoint you John Gresham, gentleman, of the city of Annapolis, to be his lordship's examiner general of all plats and surveys made by the several surveyors of each county, of which you are either to approve or disallow, as you shall find occasion, for which you are hereby authorised and impowered to take all such just fees, perquisites and advantages as shall accrue and are allowed by law. Given under my hand and seal, this 21st day of September, 1722.

CHA : CALVERT."

LIBER B. B. fol. 344.

" *Proceeding evidencing the relation of patents to the dates of the certificates, &c. at a Council held the 29th of June* 1680.

" To the right honourable the lord proprietary.

" *The humble petition of Christopher Rousby and John Rousby—Sheweth :*

" That your petitioners had each of them a severall warrant of survey, (viz.) the said Christopher for 500 acres, and the said John for 800 acres, by vertue whereof William Hemesley, deputy surveyor for Talbott county, did the 12th

day of June, in the year of our Lord 1675, lay out for your said petitioners the said severall tracts of 500 and 800 acres of land in Chester river, in the county aforesaid, by the severall names of Rousby and Sledmar, as by the surveys thereof under the hand of the said deputy surveyor, bearing date the said 12th day of June 1675, remaining upon record more at large appeareth :

" That it was some years after the said surveys were made, before patents thereupon could be obtained, which when they were sealed, were made to bear date the same instant, viz. the 17th day of December, in the 5th year of your lordship's dominion, anno 1679 : without reciting the time of the date of the aforesaid surveys.

" That since the date of the said surveys and before the date of the said pattents, certain pessons have by vertue of other warrants of survey taken up the aforesaid tracts of land or the greatest part thereof, and have gott pattent or pattents for the same, dated before the pattents of your petitioners, whereby your petitioners are in danger of loosing their said land.

" Your petitioners therefore humbly pray that your lordship will please to order new pattents to be ingrossed for your said petitioners said severall tracts, and that the same pattents may either bear the same dates of the aforesaid surveys, or that at least the dates of the aforesaid surveys may be recited in the same pattents, that it may plainly appear thereby from what time, your petitioners had interest in the aforesaid land.

" And your petitioners as in duty bound shall pray, &c.

" Whereupon ordered, that the petitioners delivering up the former grants, new patents be drawn for both the tracts mentioned in the petition, reciting therein the date of the certificate as is prayed.

" It was also ordered, that for the future all patents doe from henceforth recite the dates of their certificates. Mr. Christopher Rousby humbly moves this board, that there was also another abuse generally used in all pattents which was likewise very erroneous, and contrary to all law, right and good reason, and that was the provision in the latter end, touching alienations which positively requires the payment of the alienation to be made by the patentee, thereby giving the vender liberty to take advantage against the vendee of his own act and deed ; for (as the words now run) if the purchaser do really pay the alienation, yet the first patentee denying his order to the vendee, so to doe in the strictness of the words renders the alienation void and of no effect, and consequently the land reverts to the patentee.

" Whereupon it was considered, that for the future the said clause be amended in all patents hereafter to be passed, viz. Whereas it hath been said, (Provided that if the said A B, meaning the patentee) his heirs or assigns, shall not pay unto us or our heirs, or such officer or officers as aforesaid, the said sum for a fine, before such alienation, and enter the said alienation upon record, &c. lett be thus expressed, viz. (Provided that if the said sum for a fine for alienation shall not be paid unto us or our heirs, or such officer or officers as aforesaid, and such alienation entered upon record, &c.")

LIBER C. B. folio 53.

" *Instructions from his excellency Robert Eden, Esq. governor of the province of Maryland, to Benedict Calvert and George Steuart, Esq's judges of the land office of the said province.*

" You shall not suffer warrants of any kind to issue out of the land office of this province, until such time as you shall receive instructions from myself, or the governor and commander in chief for the time being to the contrary, that is to say,

" Warrants for uncultivated vacant lands, warrants for cultivated vacant lands, warrants of resurvey, escheat warrrants, or warrants on the proclamation.

" But if any receipt for caution money pay'd to the agent, shall be brought to you, bearing date before the 9th day of this instant, you may issue warrants to such person or persons; and all warrants that bear date on or before that day, may be renewed as usually. Given under my hand and seal, this 10th day of March 1772."

ROBT. EDEN."

N. B. This suspension is supposed to have been occasioned by the death of Frederick lord Baltimore. Nothing but *renewals*, and warrants for caution already paid, are found after this, until the 30th of May 1773; Benedict Calvert and George Stuart, Esqrs. having received a commission as judges of the land office from the new proprietary the preceding day.

" *Annapolis, 6th October* 1774.

" GENTLEMEN,

" By virtue of an instruction from Hugh Hamersly, Esquire, one of the guardians of the right honourable Henry Harford, Esq. proprietor of Maryland, dated at Spring Gardens, Westminster, the 30th of July 1774, I am directed to signify unto you, that it is the pleasure of the lord proprietary's guardians, that all further proceedings up-

on the governor's order to you, of the 22d of March last be suspended, and that all locations, settlements, and grants of land to the westward of Fort Cumberland be stopped until their further pleasure shall be signified to the contrary; of which you will be pleased to take notice and govern yourselves accordingly. I am likewise directed to transmit to the lord proprietary's guardians, by the earliest opportunity, an account of every step taken in consequence of the above mentioned order, and also of all such settlements and locations of land (if any) as have been at any time made beyond the limits mentioned in it, since the year 1763, and more particularly since the death of the late lord proprietary; you will therefore be pleased to furnish me with a list of all the warrants that have been issued out of your office from the year 1763, to the present time, to affect any lands to the westward of Fort Cumberland, with their respective dates and locations, and also, with a list of all the certificates of surveys made and returned by the surveyor in pursuance of such warrants; that I may agreeable to the instructions which I have received, transmit the same to the lord proprietary's guardians."

I am, gentlemen,
Your humble servant,

RICHD. LEE.

"*To the hon'ble Benedict Calvert and George Steuart, Esquires, judges of the lord proprietary's land office.*"

LIBER W. S. No. 17, folio 261.

END OF THE FIRST BOOK.

THE

LAND-HOLDER'S ASSISTANT, &c.

BOOK THE SECOND.

ACTUAL RULES AND PRACTICE OF THE LAND-OFFICE.

CHAPTER I.

NEW ORGANIZATION OF THE LAND-OFFICE.

IN the preceeding book we have disclosed the history and practice of the land office under the proprietary government, intermixing therewith such occasional sketches of the general history of the province as seemed necessary to convey a full and clear knowledge of the rise, progress, and nature of this establishment, the operations of which blended themselves with public affairs of every kind; for, it is hardly necessary to observe that the province was originally nothing but a great land market, in which the institutions of civil government, and the advancement of social and political objects, were of necessity to be preceded by the encrease of a population beginning with a handful of adventurers; that this encrease depended principally on the encouragement held out to emigrants, and the modes and degrees of that encouragement on the sole will of an individual. The conditions of plantation, therefore, which opened this market, and proposed the inducements to emigration, are the foundations not merely of a particular system or branch of public affairs, but of the province itself and all its establishments; and, in this view of the matter, I found it both proper and necessary to take a glance at their more general results while I displayed their effects in relation to the particular subject which I had undertaken to explain. It remains now to treat of land affairs under a different aspect and different circumstances: the land office is now a regular governmental establishment, holding a place among others; connected with some of them, and branching in common with all, from the constitution and

laws of the state ;—and not, as heretofore, a mysterious, (half public, half private,) institution, the immediate and peculiar establishment of a paramount ruler, and frequently in collision with, if not eclipsing the regular departments of government. The operations of the office at present are directed or sanctioned by positive laws : it was recognized as a necessary branch of the state polity in forming the new constitution, the 5th article of which declared that there should be two registers of the land office, one for each shore, who should have charge of the short extracts of certificates and grants of lands on their respective shores, to be prepared at the public expence, in such manner as the legislature should thereafter direct. This provision, however, went no further than to secure to the people of Maryland the means of recurrence to the evidences of titles in respect to lands already granted, and contained nothing in relation to the acquirement of lands still remaining vacant or ungranted, to which the state did not, by that instrument, expressly assert any right. The intention of this article is not extremely clear, further than that a land office, or general depository of land records, was viewed as an establishment evidently and permanently necessary, and that, among other stipulations in favour of that section of the state which was liable to particular inconveniences from its geographical position, it was thought expedient to assign a distinct office to the Eastern Shore. The further objects of the establishment were not then touched upon, because the succession of the state to the right of soil, which had belonged absolutely to the proprietary, and which in former political changes had not been taken away with the right or power of government, was not, as I have said, expressly affirmed, either in the general act of separation from the crown and people of Great Britain, or in that which erected the new and independent government of Maryland. The first provisions which pointed to the assumption and exercise of this right were contained in an act of assembly, chapter 15, passed the 20th of April, 1777, at the first session under the state constitution, " to open the courts of justice" &c. by the 8th section of which it was ordained, among other things, in order, as the act stated, that individuals might not suffer by the change of government, that all *land warrants* granted and issuing out of the land office before the appointment and qualification of the new registers, should continue " and be in force for the same time," and should be executed by the new officers " in the same manner," as if the former government had continued ; and that all officers who might have in their possession any such land warrants, or any record books, or papers, should deliver them to the proper officers immediately after their qualifica-

tion, or as soon as they should be thereunto required. By this it was sufficiently shewn to be the *intention* of the legislature that the business of the land office, in respect even to lands not yet granted, should be assumed and carried on under the authority of the state, and by its officers, (*a*) in exclusion of the proprietary.

The next act of the legislature of Maryland which has relation to this subject is that of October session 1777, chapter 8, by which the state appeared to have *in view* its succession to the bodies of land still remaining vacant, by promising certain bounties of land to recruits for the army, and to recruiting officers, with a declaration, however, that if no other method should be provided within the time specified in the act, for laying out the quantity of land required to make good that engagement, it should be procured within the limits of the state at the public expence. This kind of proviso was repeated in several subsequent acts promising bounties of land for military service.

The act of October session 1780, by which, for reasons therein set forth, all property, debts only excepted, belonging to British subjects, was declared, under certain specified exceptions and reservations, to be confiscated to the use of the state, put an end, as I conceive, to the questions, (*b*) how those bounties of land were to be furnished, and what was to be the future destination and employment of the land office. Without entering into an enquiry whether Mr. Harford might have availed himself of any of the excepting clauses or conditions of this act, it is sufficient to say that he did not do so; and, whether by the direct force of this general confiscation, or by natural and necessary consequence from our renunciation of all foreign sovereignty, dominion, and jurisdiction whatever, the right of the state of Maryland to the property in land held by the late proprietary was from this time deemed to be affirmed and indisputable. Having thus shewn the state to be in possession not only of the land office, containing the records of warrants, certificates, and patents, and the original papers belonging to surveys of land, from the first settlement of the country, but also of the land itself, vacant and otherwise, deemed the property of the proprietary at the time of

(*a*) This may seem to have been a thing not liable to any question, but there was in fact a strange hesitation, as well in the new government as in the previous temporary authorities, in regard to the land office; and an idea was professedly entertained by those in the service of the proprietary that the office was to be held as usual under their care.

(*b*) I have passed over a partial confiscation or sequestration of the property of Mr. Harford, together with that of the trustees of the bank stock, in the act of June session, 1780, not meaning any thing like a critical examination of the means and steps by which the proprietary estates became vested in the state.

the revolution, I shall proceed to an account of the measures taken for disposing of this property, and consequently to a review of those laws and regulations which regard the agency of the land office in that object; but first, it is to be observed that, although I have supposed the property of Mr. Harford to fall indiscriminately under the act of confiscation, yet, the land remaining vacant though generally considered as belonging to him, as much as his manors and other improved lands, was not, in the measures taken by the legislature for securing and disposing of *confiscated property*, in any manner comprehended within that description. It will not therefore, in future, be spoken of as *property* confiscated, but merely as land found at the revolution vacant and unappropriated within the limits of the state, and for disposing of which, without any special declaratory act concerning the right to do so, the land office was opened in the year succeeding that of the confiscation. There is one species of land, however, which was neither vacant nor within the generally received description of confiscated property, to wit, escheat land, on which the assembly exercised an authority in the year 1780, by an act of October session, chapter 51, "to procure a loan, and for the sale of escheat lands, and the "confiscated property therein mentioned;" concerning which act I mean for the present only to observe that it employed, for the disposal of this kind of land, the agency, at once, of the land office and the commissioners appointed by a preceding act of the same session "to preserve confiscated British property," by directing, after a definition of the lands to be deemed escheat, that those commissioners should have power to agree for the sale of the same, and that on their order, warrants should issue from the land office for such escheat lands, in favour of the discoverers, &c. These are the escheat warrants which, in concluding the former book, are stated to have been issued by Mr. Callahan while the office remained closed in respect to vacant land. When this suspension was removed, in the succeeding year, the proceedings in relation to escheat lands were replaced, under the customary regulations, in the land office.

As to confiscated property, so called, that is to say, such as was placed for preservation and sale in the hands of the commissioners before mentioned, I consider it an article requiring notice in this compilation, no farther than as the land office has been concerned in completing the titles of purchasers of that property, in which respect it will presently claim some attention. But in entering upon an examination of the acts of assembly relative to land affairs, I shall pursue that order which is indicated by the relative importance to the land office of the several heads or subjects into which the enquiry di-

vides itself: Accordingly I shall begin by noticing regulations of a general nature, meaning those which do not apply in particular to any one description of lands, or of proceedings, and including such provisions, not already noticed, as were intended to connect the proceedings of the old with those of the new government. The subsequent arrangement will arise out of the different descriptions of land which the state had at its disposal, and the various ways and forms in which it has been made attainable by individuals under the present government.

CHAPTER II.

GENERAL REGULATIONS.

HAVING already noticed the direction of the constitution and form of government, that there should be two registers of the land office, one on each shore, and that short extracts of the grants and certificates of land "on the Wes-"tern and Eastern Shores respectively" should be made in separate books, at the public expence, and deposited in the offices of those registers, in such manner as should thereafter be provided by the general assembly, it is proper, before we proceed to other subjects, to speak of their mode of appointment, qualifications, and tenure of office, which are also regulated by the constitution.

The 48th article of this instrument directs that the registers of the land office, among others therein enumerated, shall be appointed by the governor with the advice and consent of the council, the 40th having previously declared that those officers, with others therein mentioned, should hold their commissions during good behaviour, removeable only for misbehaviour, on conviction in a court of law.

By the 52d article every register of the land office, is to take an oath that he will not, directly or indirectly receive any fee or reward for *doing* his office, but what is or shall be allowed by law, nor will directly or indirectly receive the profits, or any part of the profits of any office held by any other person, and that he does not hold the same in trust, or for the benefit of, any other person; and the 53d article prescribes the penalties to be incurred for offences in these particulars.

The first provisions by act of assembly connecting the old with the new proceedings of the land office, namely, those of

February session, 1777, have been noticed in the preceding chapter. The actof April session, 1782, Chap. 38, sec. 4, after reciting that many certificates remained in the hands of the late examiner, directed that he should deliver on or before the first day of July then ensuing, all such certificates, whether passed or not, to the register of the land office for the Western Shore, who was to receive the fees due on the certificates examined and passed by the said examiner, and pay the same over to him or his order; and the register was to deliver any erroneous certificate to the owner, on his giving his receipt therefor, and paying the fees due for examining thereof, which were also to be paid over to the said examiner or his order, and the owner might compel payment of such fees from the surveyor who returned such erroneous certificate, or if dead, from his executors or administrators.

In regard to composition remaining, or to become, due on surveys made, or warrants issued, under the former government, the 1st section of the same act provided that surveys made before the first day of March, 1777, or made since under warrants issued before that time, might be compounded on by the first of November, 1782, after which day, warrants might issue to affect the land remaining unpaid for; provided that if the certificate of any such survey was lost, mislaid, or erroneous, or where the owner was an infant, or caveat remained in force against issuing grant, or default in payment had not been owing to the neglect of the owner, warrants should not issue to affect such surveys without the express licence of the chancellor, and with a further proviso that the owner of a certificate not compounded on within the time limited as aforesaid, might, at any time before application for a warrant to affect the land, obtain a grant, on paying for surplus or vacant land 7s. 6d. per acre, or for escheat lands two thirds of the actual value, and for improvements, if any, the full worth thereof as in other cases.

By the 2d section of the same act it was directed that all certificates returned, or to be returned, in virtue of warrants or orders granted before the first of March, 1777, should lie in the office three months from the first of July then ensuing, before they could be entitled to patent.

By the 4th section of the act of November session, 1781, ch. 20, it had been provided that the owners of certificates already made or returned should pay the sum of one shilling and eight pence current money per acre, meaning, it is presumed, so far as the land included in such certificates had not been paid for on obtaining the warrants, as, in case of vacancy comprehended in resurveys, or the quantities of original warrants being exceeded. This was no more than to say that the former rate of composition should be paid on land surveyed

under proprietary warrants, the 1s 8d being equal to 1s sterling, the ultimate price of vacant land under the former system. The 6th section of this act had also required that persons having surveys already made should compound thereon on or before the 1st day of May then ensuing, which time was extended by the act of 1782, as already mentioned. A further extension to the first of July following was granted by the act of November 1782, chapter 5.

By the 4th section of the act of 1781, just referred to, the state took upon itself the responsibility of the former government in respect to deficient quantities of land in grants, by providing that common or special warrants might issue from the land office of the Western Shore for deficiency in any grant, on such deficiency appearing on a certificate of resurvey. It was also provided that such warrants should issue in the case of caution money paid and the grant or certificate afterwards vacated; and by the same section it was declared that any common warrant or special warrant for vacant cultivation then issued might be renewed within six months thereafter, but should be executed within a year from the renewment.

The 10th section of the same act counteracted the proceedings of the proprietary's agent in receiving caution money as late as the year 1777, on certificates on which the time for payment thereof had long elapsed, and which were at the time of such receipt liable to proclamation warrants, by providing that in those cases of neglect to make regular payment in which the time limited for the purpose had expired, on or before the first of May 1775, all applications that had been made for proclamation warrants should be *regarded*, and warrant issue to the party applying, provided he should require it on or before the first of July then ensuing.

The 11th section contained an important, though a very natural, *connecting* provision, by directing that grants should issue on all certificates on which the caution money had been paid, on the application of the owners of such certificates, unless grants had theretofore regularly issued for the same lands to other persons, or unless the chancellor, on hearing, should otherwise direct. It will be perceived that this was completing by grants from the state government the titles that had been commenced under the warrants of the proprietary, saving however those cases in which patents had already passed for the lands claimed under such incipient titles, and leaving a power with the chancellor, *on hearing* (of any objection by caveat) to stop the issuing of such grants.

By an act of 1784, chapter 75, the legislature provided for the perfecting of titles commenced by warrants obtained between the 22nd of March and the 6th of October 1774 to af-

fect lands westward of Fort Cumberland, being those which we have noticed in the former book as having been issued in consequence of the order of theboard of revenue, taking off the reserve that had been laid on those lands. In opening the land office, by the act of 1781, ch. 20, the lands located or surveyed by, or under those warrants were excepted from the general appropriation of the vacant land in that quarter, but grants thereon were suspended until the further order of the general assembly. It was now thought proper to let those grants pass, but not until after the first day of July following the passage of the act, and with proviso and condition that the common consideration of one shilling sterling per acre had been paid, and that the certificates were *bona fide* the property of citizens of Maryland or of some of the United States at the time of opening the land office as aforesaid; and further, that if a grant had been, or should thereafter be, obtained on any certificate returned in virtue of any warrant issued between the two days before specified, which certificate at the time of passing the before mentioned act of 1781, was not bona fide the property of some citizen as aforesaid, or for which the consideration was (at the passage of the said act) unpaid, such grant should be void, and should be so held and adjudged, &c. The special powers given to the chancellor for discovery of the truth, and directions concerning the proceeding to be had in these cases, will be noticed in another place. But there follow two other provisions concerning warrants granted for lands westward of Fort Cumberland, by the first of which it was declared that any grant issued, or to issue, on such warrants; obtained *on or after* the sixth day of October 1774 aforesaid, should be void, and so held, &c. By the other, being the last section of the act under consideration, it was provided that where surveys westward of Fort Cumberland had been made under warrants obtained between the 22nd of March and the 6th of October 1774 in which the quantities expressed in the warrants had been exceeded, grants might issue on such surveys, on the excess being paid for to the treasurer of the Western Shore, provided that the warrants had not been exceeded more than *one fourth*. A provision was afterwards made, by a supplement to this act, passed at the session of 1785, chapter 67, for certain cases in which the warrants had been exceeded more than one fourth, and the whole excess compounded on under the act of April 1782, chapter 38, or that of the November session of the same year, chapter 5. These cases were referred to the chancellor, who, by examination, in the manner prescribed in the original act, was to ascertain whether the certificates were regular in respect to the citizenship of the parties as before defined, and was then to consider and determine whether the

proprietors of such certificates were entitled to grants "in "equity and justice, and agreeably to the rules and practice "of the examiner general under the old government in pas- "sing certificates in which the quantity of land expressed in "the certificate is exceeded, and of issuing grants on such "certificates;" in which case, he was to order grants to issue: but if he found the parties not so entitled, he was to endorse on every such certificate his order or decree that the same was void and of no effect, after which the party was to receive an order on the treasury for the caution or composition money paid on such certificate, which the treasurer was to discharge out of any money not specially appropriated, and retain the certificate as a voucher.

By the third section of the same act of 1784, chapter 75, it was ordained that any grant issued or to be issued for land lying within any manor to the westward of Fort Cumberland should be void, and so held and adjudged in any court of law or equity within this state.

By an act of 1785, chapter 81, the state relinquished all claim to payment for *surplus land* contained within the proprietary grants, by declaring that no caution or composition money should be required for any surplus land on any certificate then returned, or thereafter to be returned, on resurvey of any tract or part of a tract of land granted before the first day of January seventeen hundred and seventy seven: and by a supplement thereto passed at April session, 1787, chapter 43, it was declared that even where on resurvey of several tracts or parts of tracts under the same warrant there appeared to be surplus in some and deficiency in others, the surplus on the one hand should not be applied to make good the deficiency on the other. These are among the provisions by which, as I have stated in the former book, a quietus was given upon the subject of surplus land.

To complete the disposition of whatever remained of the property or concerns of the government it was provided by the act of 1781, chapter 20, section 4th, that the treasurer of the Western Shore should have the care and possession of all the debt-books and other papers relative to the revenue of the late proprietaries.

In order that disputes concerning matters which had taken their rise under the proprietary system should not be determined by other rules than those which prevailed when the causes of such disputes took place, it was provided by the 6th section of the aforesaid act, that the chancellor in considering and deciding on the validity of surveys or grants of land, should be governed, as to all warrants, or surveys, theretofore granted, or made, by the *former rules* of the land office: and, the same principle was in the succeeding section

applied to the *examination* of old certificates. The foregoing provisions have been selected from the early acts of assembly as adjusting matters left in unfinished or doubtful situations by the former government, and, as before mentioned, connecting the old with the new proceedings of the land office: I shall proceed now to a more general examination of those acts.

The act of November session 1781, chap. 20, "to appro- "priate certain lands to the use of the officers and soldiers "of this state, and *for the sale of vacant lands*," which has been already so often cited, and which is by subsequent acts, as well as by general acceptance, termed *the law opening the Land Office*, is the first that makes arrangements for disposing of the state's right to vacant land. This act, after a preamble reciting that "there are large tracts of "land within this state reserved by the late proprietaries "which may be applied in discharge of the engagement of "lands made to the officers and soldiers of this state, and" that "the granting the other vacant lands in this state "would promote population, and create a fund towards de- "fraying the public burthen," proceeds as follows:

"Be it enacted by the general assembly of Maryland, that "all the lands within this state in Washington county, west- "ward of Fort Cumberland, and for which located warrants "have not issued, or surveys been made under common "warrants and are now *bona fide* the property of any subject "of this or any of the United States, and on which the money "has been actually paid, shall be and are hereby appropriat- "ed to discharge the engagement of lands heretofore made "to the officers and soldiers of this state, and the residue to "the use of the public, as the general assembly shall here- "after direct; and no grant shall issue on any survey made "in virtue of such warrants before the order of the general "assembly."

This section is inacurately worded, and its meaning may be better understood by a transposition and some change of terms, so as to read in substance, that all lands within the state in Washington county, westward of Fort Cumberland, were appropriated to discharge the engagement made to the officers and soldiers, and the residue, after completing that engagement, to the use of the public, &c. except those lands on which locations had been made by special warrants, or actual surveys had been made under common warrants, (which warrants or surveys, and the rights resulting from them, were at the time of passing the act bona fide the property of subjects of Maryland, or of some of the United States) and for which lands the composition money had been paid, but with a proviso that the lands so surveyed or located, and paid for, though

excepted from the appropriation, should not be patented without the further order of the legislature.

The 3d section of this act, in pursuance of the direction of the constitution, heretofore recited, ordains that "there shall "be a land office held for the western shore at the city of "Annapolis; and for the Eastern Shore, at the place appointed "for holding the general court on that shore, under the direc- "tion and care of the registers of those offices for the time "being: and" that "such registers shall have the possession "and care of the extracts of the grants and certificates of the "land on their respective shores, which shall hereafter be "made agreeable to the directions in the form of govern- "ment:" it then prescribes the general powers and duties of those officers, as well as of others connected with the establishment in the following words; "and such registers shall "grant warrants for the resurveying, proclamating, or es- "cheating any land within any of the counties on their respec- "tive shores; and shall also on the order or titling of the "treasurer of their shore, issue common or special warrants "of vacant cultivation, for the surveying any vacant land, "cultivated or uncultivated, in any of the counties of their "respective shores; and such warrants shall be directed to, "and executed by the surveyor of the county where the land "to be surveyed or escheated shall lie, who shall return his "certificate to the register of the land office for the Western "Shore, to be delivered by him to the examiner general, who "if the same shall be imperfect, shall return it to the said "register, to be by him transmitted to the surveyor who "made the same, for amendment; but, if the same shall pass "examination, the examiner shall deliver it into the land office "for the western shore, and the register thereof, after pay- "ment of the purchase or caution money (if any due) to the "treasurer of the western shore, shall make out a grant, "and present the same to the chancellor for his approbation, "and being attested by him, and signed by the governor for "the time being, the seal of the state shall be thereunto an- "nexed." On this section which is given at large as containing a great part of the organization of the land office under the present government, it is necessary to remark that some of its provisions have been since changed or annulled; all certificates being by the act of 1795, ch. 88, made returnable in the first instance to the examiner, and certificates of land on the eastern shore being, in virtue of the act ch. 61, of the same session, returned to the land office of that shore, and there patented, under regulations which will be hereafter noticed.

The 4th section directs that the treasurers may grant orders or titlings to the registers of their respective shores, "for "common warrants to take up vacant uncultivated land, or

" for special warrants to take up cultivated or improved va-
" cant land," on the payment of three shillings and six pence current money per acre ; the parties returning certificates under such warrants, to pay four shillings more per acre within one year from the dates of the warrants, so that the state shall receive the sum of seven shillings and six pence for every acre of vacant land granted under warrants so to be issued. After thus fixing the price of vacant land, which was afterwards, by the act of 1778, ch. 44, reduced to three shillings and nine pence per acre, payable in the same proportions, to wit: one shilling and nine pence on taking the warrant, and two shillings more within a twelve month: the section proceeds to direct that no payment shall be delayed or denied on account of the second payment not being made, but that the register in making out a patent under such circumstances shall endorse the sum due or to become due thereon, and deliver an account thereof, accompanied by the date of the warrant, to the treasurer *of the western shore*, to be entered on a book to be kept for that purpose ; and, that on failure of regular payment, the treasurer shall lodge an account against the patentee with the clerk of the general court, or the county court where the party resides, who shall issue *fieri facias* against the lands and tenements, goods and chattels, of such patentee, to raise the money due on such patent ; the land so granted to be liable therefor, in whosever hands it may be. On this provision, which if not expressly repealed, does not accord with the spirit of subsequent regulations, some remarks will hereafter be made.

This section further provides, that the treasurer for the western shore shall receive for improvements on cultivated lands their actual value, and for escheat land two thirds of its real value, in current money: It provides also that common or special warrants may issue from the land office (on the western shore) for deficiency in any grant, and likewise in the case of caution money paid and the certificate vacated. This has already been noticed as having reference to the proprietary's grants, but it is a regulation operating also on those of the state government.

The 6th section directs that the time for compounding on all vacant land shall be within one year from the date of the warrant, and that the purchase money on all escheats shall be paid within the same time, after which, warrants may issue to other persons who shall apply for the same ; which regulations are still in force. The same section gives power to the governor and council, " from time to time, to make and establish
" such rules and orders for the direction of the treasurers in
" issuing their titlings or orders for warrants, and for the
" conduct of the examiner-general and the registers, in their

" respective offices, and for the behavior of surveyors, as they " shall think proper," which rules and orders are to be observed by the said officers respectively: It directs further that " if any dispute shall arise concerning the validity of surveys " or the grant of lands," the same shall be heard and determined by the chancellor as to all former warrants and surveys agreeably to the *former rules* of the land office, and as to future warrants and surveys according to such rules and orders as shall be established by the governor and the council.

By the 7th section the governor and council are authorised to appoint an examiner general, who is to reside at Annapolis, and is to " examine, and pass or reject certificates, agreeably to the former or future rules and directions as the case may be, " and is to take an oath to execute his office diligently and faithfully, without favour, affection, partiality or prejudice.

The 8th section directs that a preference shall be given to those who shall have made the first application for warrants (in proper hours for the transaction of business) before the first day of December, 1781, and to those who shall in like manner make the first application after the first day of February 1782. This is so far worthy of notice in speaking of general regulations, as that it expresses the sense of the legislature that business is not to be transacted in the land office at unusual hours:—In other respects the provision was temporary, being designed in all probability to defeat those applications that had been or might be made while this important law was in discussion.

The next provision of a general nature is contained in the 9th section, which, after requiring that the value in current money of all escheat lands, and improvements thereon, and the real value in current money of all improvements on cultivated land, shall be returned and certified by the surveyor upon oath, at the time of returning his certificate of survey, directs that the treasurer of the western shore shall finally ascertain the value of such land and improvements, and shall receive the money therefor from the party.

The 12th section, after reciting that land originally included by the courses and distances expressed in the certificates of lands formerly granted, but since excluded by the variation of the compass, ought not to be taken from the person claiming under such survey and grant, and that attempts may be made to take up such land as vacancy, contrary to justice—directs that no grant shall issue, unless to the person holding under the grant originally including the land as aforesaid, upon any warrant to affect land which the Chancellor may on caveat adjudge to have been included by the courses of such original grant, and since excluded by the variation of the

compass: but that the chancellor may on such adjudication, or on the certificate of the party claiming under such original grant, order a patent to issue confirming to the said party the lands which shall be determined to have been originally included by the courses therein expressed; for which land, or for the improvements thereon, no payment shall be required. This section also directs that no patent shall issue on any certificate of survey returned, or to be returned, unless upon proof of notice having been given by the party applying for such patent to the person or persons whose land may be affected by such survey, or their attornies, agents, &c.; but this strange and impracticable regulation was repealed by the act of April, 1782, ch. 38, which directs that when certificates, under warrants granted since the passage of the preceeding act of 1781, have remained in the office six months after being compounded on, grants may issue without the notice required by that act. As the language of the last mentioned provision is that such certificates *shall* lie in the office six months after they shall be compounded on, it seems also to repeal the privilege noticed a while ago of obtaining a patent without making full payment of the composition.

The 13th section declares, by way of proviso to that part of the preceeding one which regards vacancy occasioned by the variation of the compass, that if the chancellor shall be of opinion that the land claimed as vacancy was not originally included, and shall order grant for the same, the person claiming under the original patent shall "have a right to con-"trovert by trial at law, whether the same land or any part "thereof was originally included in the certificate on which "the original grant did issue," and that "the opinion of the "chancellor shall have no influence on the question before a "jury, but the matter shall remain in the same manner as if "no determination by the chancellor had been given.

The 14th section I think it best to insert at large, in doing which I shall designate by italics, as the last edition of the laws has done, that part of it which is (*a*) repealed.

"AND whereas the allowing natural or artificial boundaries to be expressed in certificates may prevent injury from the variation of the compass, BE IT ENACTED, that the surveyor may insert in any certificate any boundary, artificial or natural, as being at the end of the distance expressed, provided he shall actually measure such distance; and, in case the length of the line expressed in the certificate shall not reach the boundary, and the line shall not have been actually run, on caveat against grant issuing on such survey the same shall be void, so far as that the land which is excluded by running from the end of course and distance to the end of the next

(*a*) By act of November, 1787, ch. 3.

course and distance, or to the next boundary, if any, shall be liable to be affected as vacancy; *and before any grant shall issue on any certificate expressing more than one boundary for the beginning, the owner shall make oath or affirmation (as the case may be) that he knows or believes that the distances mentioned in the certificate were actually run, and that no more land is contained by the lines and boundaries than returned by the surveyor;* and every surveyor, before he enters on the execution of his office, shall swear (or affim) that he will not mention any boundary in his certificate of any survey unless he shall actually run and measure the distance to such boundary, and that the boundary or boundaries by him returned shall be at the end of the line as expressed, and that the certificate does not contain more land than certified by him to the best of his knowledge and belief."

The 15th section directs certain annual returns to be made from the land office to the commissioners of the tax, respecting which, alterations have been since made, which will be noticed in speaking of the duties of the registers.—The 16th relates to confiscated property, and the 17th and last section of the act under consideration, repeals the powers of the commissioners of that property to grant warrants for, and contract for the sale of, escheat land.

The act of April session, 1782, ch. 38, many of the provisions of which have been already noticed, contains some further ones applicable to this head of enquiry. It prescribes, as has been before incidentally mentioned, the now established rule that certificates shall lie in the office six months after they are compounded on, before they can be admitted to patent. The 3d section directs that chain carriers shall be sworn, and prescribes their oath, to be noticed more particularly hereafter. The 5th directs that where certificates include land lying within any of the reserves made by the late proprietaries, no grants shall issue thereon before they are corrected so as to exclude such reserve land: the 6th and 7th, pursuing the same subject, and reciting that persons, by mistake or misapprehension of the act opening the land office, may conceive that they have a right to take up the lands reserved for the use of the late proprietary as common vacancy, direct that instructions shall be given by the governor and council to the surveyors not to run the lines of any common warrant, special warrant, or warrant of resurvey, issued or to issue out of the land office for common vacancy, into the manors or lands theretofore reserved for the use of the proprietary, or which may have been set apart for the use of the Nanticoke indians, the said reserves being appropriated to such uses and purposes as the general assembly shall thereafter direct and appoint,

and that any caution money which may have been paid for reserved land so included shall, by order of the governor and council, or the treasurer of the shore where the payment may have been made, be repaid out of the first money which shall come into the treasury.

The 8th section, for the purpose of disposing of *caveats* already instituted, directs that they shall continue in force six months from the first of July then ensuing, after which, if they are not prosecuted, or subpoena taken out to bring them to a full hearing, patents may issue; and the register of the western shore land office is required to make out a list of all certificates under caveat, with the name of the owner, that of the land, and by whom and when caveated; which list is to be transmitted to the clerk of each county, and by him put up at the door of the court house for the information of all concerned. These regulations are noticed here because the proceeding by caveat is common to all kinds of certificates, and is therefore of a general nature, but they were in fact but temporary provisions, and no publication or return is at this time made of certificates lying under caveat.

The 9th section establishes a rule which is still in force, viz. that where special or common warrants remain unexecuted, warrants may be granted in lieu thereof, or they may be applied towards the composition on any certificate: this section further says that nothing therein shall be taken or construed to oblige the owner or possessor to pay for surplus land, or to weaken the title of such owner, or to give any person, except the owner under the grant theretofore issued, a right to take up or obtain a grant for any such surplus. The connection between this and the former part of the section I cannot pretend to point out, but, as general regulations, it is proper to notice them in the order in which they appear.

The 11th section of this act regulates the method of summoning parties and witnesses, in trials on caveat, enforcing their attendance, &c. which, as it must be noticed in another place, I shall not at present dwell upon.

By the act of 1785, ch. 66, sect. 8th, it is provided in conformity with the agreement between the proprietaries of Maryland and Pennsylvania, that persons holding, under Pennsylvania grants, lands which had, on settling the divisional line, fallen within the limits of Maryland, but which, previous thereto, had been considered as lying within the other state, and subject to its jurisdiction, shall be at liberty to take out patents from the land office of this state, which the register of the said office for the western shore is authorised and directed to make out and grant, upon the application of such land holders, and upon their producing their Pennsylvania pa-

tents or authenticated copies, to be lodged in the land office, the said persons being liable to the payment of no purchase or caution money, or any charge or demand whatsoever, except the common fees of office.

The 13th section of the act of November 1788, ch. 44, takes off all reserves whatever, with exception of the appropriations made or confirmed by that act, and subjects all vacant land, as well westward of Fort Cumberland as elsewhere in the state, not affected by warrants already out, to be taken up in the usual manner by warrant, at the rate of three shillings and nine pence per acre, payable in the proportions before established; and this has continued to be the price of vacant land, except in Allegany county, in which, by the act of 1791, ch. 85, it is reduced to two shilling and six pence, payable one half at the time of obtaining the warrant, and the other on the return of the certificate.

The act of 1797, ch. 114, contains, in the three last sections, several important provisions relative to caveats, which although they will require to be noticed again, are proper to be mentioned among that class of regulations which we have at present under consideration. By these it is ordained, that where composition money remains due on a certificate, caveat shall not be entered against it without the party desiring such entry first swears or affirms that he conceives he has, on the ground of right or pretension to the land, or some part thereof, a good cause for entering the same, and that it is not done for the purpose of favouring the owner of the certificate, by prolonging the time allowed for compounding, or by his or any other person's request, but for the purpose only of prosecuting by claim: 2d, That no caveat shall remain in force longer than 12 months, unless, under special circumstances, the chancellor (or, on the eastern shore) the judge of the land office, (concerning whose appointment and authorities we shall presently have occasion to speak) shall otherwise direct. 3d, That all caveats already entered shall be brought to issue on or before the first of January 1800, unless, on special circumstances as aforesaid, it shall be otherwise directed; and that, after that time, no particular order intervening, they shall be "wholly discontinued, and the ordinary proceedings "had as if no such caveat existed." The first of these three provisions was intended to strengthen a former one of 1789, ch. 35, sect. 5, by which it was declared that in case of a caveat against a certificate on which caution money remained unpaid, the time during which the said caveat might remain undetermined should not be considered as a part of the time limited for payment, provided the owner would make oath or affirmation that he had not procured such caveat to be entered for the sake of delay, nor in any manner whatever contrived or

endeavoured to postpone the determination thereof longer than was necessary to obtain a full hearing of the real merits of the case. This regulation still obtains, for it is not expressly superceded by the other, which however appears sufficient without the additional testimony of the caveated party to prevent the collusion that was apprehended in these cases.

CHAPTER III.

CONCERNING THE POWER OF THE GOVERNOR AND COUNCIL TO INSTRUCT THE TREASURERS, EXAMINERS, REGISTERS AND SURVEYORS, AND THE GENERAL DUTIES OF THOSE OFFICERS.

AS the practice of the land office was understood to rest in a great measure upon traditionary rules and usages, the legislature in re-establishing it, could not frame or adopt express regulations suited to all the cases that might arise: they therefore directed many things to be done without prescribing the exact manner of performing them: they spoke, for example, of different kinds of warrants, without defining their respective forms or properties, relying on the sufficiency of the descriptive appellations given to them to point out to the proper officers what was intended, and, in many other cases the meaning of the laws could be ascertained only by reference to the customary language and proceedings of the office. Nevertheless, as traditionary laws or customs, interpreted and applied without any check by ministerial officers, did not promise every thing that was to be desired in a business of such importance as that of the land office, it was thought proper to lodge a power somewhere of remedying the uncertainty or the injudiciousness of those customary laws, by ordaining positive regulations where they should appear to be wanting; and in imitation of the former system, this authority was given to the governor and council, as has been before mentioned, by the 6th section of the act of 1781, opening the land office, by which they were empowered to "make and "establish rules and orders" for the direction of the treasurers, the examiner general (there being then but one) the registers, and the surveyors. In regard to the treasurers the business which these instructions were to regulate was specified; being that of issuing their titlings or orders for war-

rants: why the power given them in the same law, of finally ascertaining the value of escheat land, and of improvements, was not also placed under the eventual controul of the governor and council I cannot conjecture, except by supposing that it was overlooked, which might the more easily have been the case, as it was contained in a section subsequent to that which regulated the authorities of the executive. Be this as it may, the treasurers are, in their duties relative to land affairs, subjected to the direction of the governor and council only in the article which has been mentioned, comprising, I suppose, those orders which they give for proclamation warrants, on a payment of one tenth of the composition, under a subsequent act; and, on the subject of those titlings no instructions have been given.

In regard to the examiner general, the registers of the land office, and the surveyors, the power of instruction vested in the executive, extends to every part of their duties, the language of the act being that "the governor and council "from time to time may make and establish such rules and "orders for the direction of the treasurers in issuing their "titlings and orders for warrants, and for the conduct of the "examiner general and the registers in their respective offi-"ces, and for the behaviour of surveyors, as they shall think "proper, and" that "such rules and orders shall be observed by "the said officers respectively." It is a mark of the deep obscurity of the land office system that there has never been an attempt under this power to prescribe the duties of either examiners or registers, and that the main body of the instructions issued to surveyors is little more than a copy of those of the proprietary's board of revenue, which were themselves copied from others of too ancient a standing to be applicable to present circumstances. Accordingly, those instructions, which will be hereafter inserted, together with some additional ones, issued on the suggestion of the register, or of some (*a*) one member of the board who happened profession-

(*a*) I happen to have a knowledge of these facts, and should have to sustain a share of any reproach that was due to the executive on this score, having been a member of the council, with an interval of one year, from 1785 to 1794. The instructions for surveyors had been prepared before my time. I supposed them original, and often looked at them with a desire to comprehend the business to which they related, but, for want of some clue or key to the nature of the land office system, I could not profit by that inclination. When an additional rule was proposed by a member who knew something more than the rest about land affairs, his reasonings were heard without being understood, and the rule was adopted. As to the land office itself, to those who did not actually resort to it to take up land there was an impenetrable darkness. The high opinion justly entertained of the gentleman who held the office prevented any uneasiness or enquiry concerning the manner in which the business was executed, and his habitual discretion, as well as his perfect ability, from being, as it were, brought up in the office, to act without direction, prevented those

ally to have an acquaintance with the subject, are in so many particulars either impracticable, misconstrued, or disregarded, that the surveyors can hardly be said to act under instructions more than the registers, who follow former rules and precedents, where they find them applicable, without their being expressly sanctioned by the executive.

The officers, then, concerned in the land office establishment, except the surveyors, and with a slight exception also, which will presently be noticed, in the case of the registers, act without direct instruction other than what is contained in the laws, and as these do not provide for all the operations, and the modes and forms of proceeding, incident to the establishment, it is proper to enquire in reference at once to law and usage by what rules the officers are governed in the performance of their several functions. In regard to the treasurers this question presents no difficulties. Their duties are in a considerable degree original, and are all directed by acts of assembly. The substance, therefore, of those duties rests upon their own construction of the laws, and for the form they are presumed to adopt such precedents from the practice of the proprietary agents as they find convenient, and in other cases to devise rules of their own; which could not with the same propriety be done in offices of record, even where the ancient forms were evidently liable to objection. In regard to the issuing of titlings or orders for warrants, it is a proceeding derived from the former government, and used in all cases in which the payment of money was required previous to issuing of warrants, namely those of original warrants, common or special, for vacant land. The chief agent was the person who formerly received the caution money, and issued those orders, agreeably to which the register of the land office granted warrants, reciting the payment and filing the order: the course and form are at present the same, the treasurer standing in place of the agent. He keeps a separate account of the money received in this and other ways for vacant or escheat land and the improvements thereon, distin-

applications which an officer less expert might have occasionally made to the board, and which would, of course, have led to a disclosure of the rules and usages of the office. It is not meant by all this to say that any great inconvenience has been sustained by the want of those instructions to the registers of the land office, which the governor and council were authorised to give; for the laws prescribe the substance, and the ancient and well considered usages govern the forms, of proceedings in that office; besides which, the power of the chancellor, (and on the Eastern Shore, of the judge of the land office,) may very well reach to every case that can require a special direction. In regard to surveyors I do not scruple to affirm that instructions absolutely new, and adapted to the new state of things under the present government, were and are extremely requisite, and that the omission of them has been owing to that general want of information concerning land affairs which it is the aim of the present undertaking to remove.

guishing the receipts for each particular object, and it makes a distinct part of his annual account rendered to the legislature. His land receipts, besides those on ordinary titlings are, the composition remaining due on certificates under common or special warrants, viz. two shillings, or, in the case of Allegany county, one shilling and three pence, on every acre in such certificates to which warrant has already been (*b*) applied; the whole sum of three shillings and nine pence (or in Allegany county two shillings and sixpence per acre) for all beyond such application; and the value of the improvements, as returned by the surveyor, or as adjusted by himself if he sees cause to revise the surveyor's valuation: On escheat land two thirds of the value, as reported by the surveyor, with the same power of revision and alteration:—in the case of proclamation warrants, one tenth of the composition remaining due on the certificate to be proclamated, payable beforehand for a titling or order for such warrant, and the remaining nine tenths on the return of a certificate, or before patent can issue thereon. On certificates of resurvey he receives the full price of vacant land for all that is included with the original tracts, deducting first therefrom the quantities of which those originals are found deficient. I do not speak here of the time within which these payments are to be made. The neglect to compound on a certificate is at the risk of the owner, but the treasurer may receive at any time the composition due on a certificate which is not already under a proclamation warrant, or vacated. He receives nothing less than the whole of what is due, both for caution and improvements. In case of a certificate's being found erroneous and ordered for correction, and a tender being made by the party of the composition due thereon, for the purpose of obtaining an allowance of three months for the said correction under the 8th section of the act of 1795, ch. 88, the treasurer acknowledges such tender by endorsement on the certificate, and he also endorses his receipts of money for caution, improvements, escheats, &c. on the certificates themselves. He receives from the register of the land office in quarterly payments those taxes which are paid in that office on petitions, orders, and adjudications. These are the general or standing duties of the treasurers, for I have meant here to speak of the treasurer and of the land office of either shore those which remain are of a special or temporary nature, relating to confiscated property, reserved lands, &c. and will be noticed so far as may appear requisite when we come to those subjects.

(*b*) I speak here of warrant applied in making the survey, and if this has been issued for deficiency, no further payment is requisite on the number of acres covered by such application.

The duty of the examiner general is defined in very few words by the act of 1781, which directs his appointment: being simply, that he " shall examine, and pass or reject, any " certificate delivered to him, agreeably to the former or fu- " ture rules and directions, as the case may be:" This follows the section in which it is directed that disputes in the land office arising on warrants issued on surveys made before the revolution, shall be decided by the chancellor according to the former rules, and those on new warrants or surveys according to the rules that may be established by the governor and council, and it has reference to that section, without which it would not be intelligible.—The examiner then when an old certificate or a certificate founded upon an old warrant was brought to him, was to act upon it as he supposed the examining officer of the proprietary would have done, and in respect to certificates founded on the warrants of the state, the old practice was to give way to the rules which might be prescribed by the executive. As far as I can learn, this distinction has been altogether nugatory; for, concerning the former practice of the examiner general, as to any particular principle to govern the passing or rejecting a certificate, further than what regarded its internal correctness and consistency, and its being apparently founded on a warrant in force, I do not find that any knowledge has been possessed in the examiner's office under the present government; and, as the duties of the examiner have not been regulated by the governor and council, he could only inform himself, by such means as might be within his reach, of the former rules and practice, and apply them indifferently to all cases, so far as there might be nothing in the acts of the state assembly to render them improper or inapplicable. Whether the practice in examining certificates has been derived from former precedents, or settled by the first examiner under the state government, according to his own idea of what was necessary to fulfil the design of his appointment, it is upon a footing that comprehends nothing whatever of principles, but merely secures the correctness of a certificate in respect to the agreement of its several statements, or component parts. The plot for example, must agree in the length and direction of its lines with the courses and distances expressed in the body of the certificate, and must contain within its aera, according to the scale assumed, the quantity of land for which the certificate is returned, and the table of courses must be conformable to the rest; besides which, I presume that a certificate would not be passed if it appeared on the face of it to be founded on a warrant out of date; but I believe that nothing else is attended to, as it often happens that a certificate, passed and received into the office, is, at the expiration of

the time prescribed for its lying there, found not in a situation to be patented, by means, in the case of a resurvey, of tracts being included that were not mentioned in the warrant, or of its comprehending lands not contiguous to each other, besides other defects not discoverable by the examiner, as want of title to the originals, &c. which will hereafter be noticed. If the examiner passes a certificate, his approbation is of course endorsed thereon. If he rejects it, he endorses that it is "disallowed," stating the reason; and when it is presented to him again after being corrected, which may be done without any order, for a certificate never comes under the cognizance of the chancellor until it is in the office, he examines it anew, in some cases disallowing it a second time, and finally passes it when the defects or errors are removed. All that remains to be said here concerning the duties of the examiner general is that he makes an annual return on oath to the general assembly of the amount of his fees for the preceding year; a regulation for his benefit, as they always fall short of what the legislature has by successive resolutions determined to be a reasonable compensation for his services, which sum has therefore for several years been completed by drafts on the treasury for the deficiency. These remarks in like manner with those on the duties of the treasurer, apply generally to the examiner of either shore; but, the appointment of an examiner, and judge, for the eastern shore, with their peculiar duties, will be the subject of a separate article.

As to the duties of the registers of the land office, to state them in every particular would be to describe the practice of the office more at large than is designed in the present chapter; but, although the method I have adopted must occasion numerous repetitions, I have thought that a cursory view of the personal duties of the several officers concerned in the land establishment would throw, by anticipation, a useful light on the more regular account which I propose to give of the matters themselves transacted and performed in the land office. I shall therefore make a slight enumeration of the duties of the register, meaning, in a general way, the register of either shore, although it is to be borne in mind that, until the year 1795, the duty of the eastern shore register was confined to the issuing of warrants, and such matters as were incident thereto, all certificates being returned to, and patents issued from, the office of the western shore: it is also to be recollected that there are some duties peculiar to the register of the eastern shore, which will be noticed when we speak of the arrangement of 1795, just mentioned.

The register of the land office for the western shore has the care and custody of the records and papers arising under

the provincial government, not expressly by any law, passed since the revolution, for that of 1781, gives to the registers the charge only of the short extracts of certificates and grants therein mentioned ; but, because the records at large, which have been claimed and kept by the state, naturally fell into the hands of that officer, and were indeed, placed in his charge by the governor and council when they were surrendered by the proprietary's officers. The nature of his charge and trust, in respect to those records, and that of both registers in regard to records and papers taking their rise since the revolution, are in some measure regulated by an act of Assembly of 1742, ch. 10, which required the register of the land office among other officers to give bond for providing at his own expence, and keeping in due order and repair, good and sufficient books for entering and recording all matters required to be recorded, &c. The register of either shore takes, besides the oath already mentioned to have been prescribed by the constitution, an oath directed by the act of 1779, ch. 25, sect. 8, to wit, that he will faithfully and impartially, to the best of his skill and knowledge execute his office, and that he will not willingly or wittingly charge, ask, take, exact, demand, or receive, any other or larger fees for doing his duty than are mentioned, rated, regulated, and established by the act entitled " an act for the regulation of " officers' fees." He has charge of the seal of office, with which he attests all warrants issuing therefrom, and all copies of records and office papers to which his attestation is desired. He issues warrants of resurvey and of escheat to the parties requiring them, without particular direction, and common or special warrants, and warrants on the proclamation, on the orders or titlings of the treasurer. He also issues, ex officio, warrants, common or special, for vacant land, in lieu of warrant remaining unexecuted in the whole or in part, likewise for or in lieu of deficiency found, on resurvey, in original tracts and, for composition paid in cases in which the certificate or grant shall afterwards have been vacated, or where certificates ordered for correction become void by not being afterwards returned within the time prescribed by law ; and he applies unexecuted warrant towards the composition due on certificates for vacant land either taken up under original warrants or included in resurveys, certifying such application, where it does not make a full settlement, to the treasurer, who thereupon admits it towards payment of the composition due as aforesaid. When certificates are returned to the office examined and passed, he receives them, whether compounded on or not, provided that they are offered within eighteen months from the date of the warrants on which they purport to be founded, and endorses on them the time of return, which is also

entered in a book kept for that purpose. As to any irregularity, except their being absolutely out of date, the register does not undertake to judge of it, so as to refuse or send back the certificate, but notices such irregularity by endorsement in form of a *query*, by way of caution to himself and his successors not to issue a patent until the objection is removed. When a certificate has lain in the office six months after being compounded on, and patent is demanded on it, he then sees that it is in all respects regular, and free from material defect, that is, in the case of a simple survey, that the warrant on which it was founded is on record, that it was in force, as to date, when the survey was made, and was not expended by previous *applications*. In case of a resurvey, he satisfies himself further, that no original tracts are included which were not mentioned in the warrant, and that the originals so mentioned and resurveyed are patented lands; besides which, he notices any thing on the face of the certificate or plot evidencing a violation of the established rules of the office, as, the including in a resurvey lands not contiguous to each other, &c. If all is right in the particulars first mentioned; if no irregularity or violation of principles, is apparent, and if the party in whose name the certificate stands in the office, either originally or by a sufficient assignment, be living, the register prepares a patent, which is completed as a matter of course. Otherwise, he points out the objection to the party applying: If it rest merely on the death of the owner of the certificate, and the person applying is furnished with the necessary documents to shew who is entitled to the land, the register receives and files a petition, prepared in the office, for the fee annexed by law to that service, if desired; which is laid before the chancellor, with the necessary papers to support the facts therein stated, and on his order, patent is issued to the party or parties owning or having the chief interest in the land. If the certificate itself appears defective, he points out the particulars in which he finds it so, and the party may endeavour, by petition and explanation, to obtain an order for patent, or may obtain an order for correcting the certificate, which is thereupon delivered to him for that purpose. The register receives the taxes imposed by law on petitions, orders, and final adjudications, in the land office, of which he makes quarterly payments to the treasurer. By the 36th section of the act of 1803, ch. 92, "for the valuation of real and personal property," &c. each of the registers makes an annual return between the first day of March and the first of May, to the commissioners of the tax for the several counties of his shore, of all certificates which have become ready for patent within the preceding year, expressing the name of the land, the quantity it contains, and the person who is entitled to patent; and in case of a re-

survey, is to express the names of the original tracts, and the quantity of vacancy added. By the same act the register of the land office (for the western shore) is required to furnish a like annual return to the commissioners of the tax for Allegany county of lands, granted, disposed of, or sold, in that county under the act of 1788, ch. 44, to dispose of the reserve lands westward of Fort Cumberland, and to fulfil the engagements to the officers and soldiers of the Maryland line, so far as the same have not been already returned.

When a regular application is made for the entry of a caveat, the register makes such entry by endorsement on the certificate if there has been one returned to the office: otherwise, by a note opposite to the warrant. He enters in a small book kept for that purpose, all orders and proceedings in the case until it is adjudged and settled, and furnishes copies of those orders when demanded.

It remains to speak of the duties of surveyors, meaning those of a general and permanent nature, and chiefly such as are prescribed by law, although the instructions of the governor and council must be incidentally noticed. In this preparatory view, moreover, of the duties of officers, I have proposed to mention only those duties about which no question as to construction, and no doubt on the score of practicability can arise. The surveyors are, as well as the other officers of the land establishment, noticed by the constitution, and except that they do not hold their offices during good behaviour, come under the same articles in regard to appointment and qualification as the registers: but the number of them is not therein prescribed, nor is there any particular direction by law on that head. In the appointment of a surveyor for each county the executive has pursued the general system of the former government, and the act of 1781, opening the land office, by its directions concerning the execution of warrants, has recognized and established that plan of appointment. The act of 1779, ch. 25, "for the regulation of officers fees" is the first however, that contains any particular direction respecting the surveyors:—By the 12th section of this act it is provided that where any surveyor returns an erroneous certificate for examination, the party for whom the survey is made shall not be burthened with any fees whatever on such erroneous certificate, but that the examiner for his trouble in ascertaining it to be erroneous, shall receive from the surveyor who returned it one third of the usual examination fee. On this it is proper to remark, for fear of misconstruction, that the full fees both for surveying and examining are undoubtedly to be paid by the party when a correct certificate is at length returned.

By the direction of the act of 1781, ch. 20, sect. 3, already alluded to, the warrants which the registers are authorised to grant, on titlings or otherwise, are to be directed to and executed by the surveyor of the county in which the land to be surveyed or escheated shall lie. The duty of the surveyor upon receipt of a warrant is not regulated by this act, nor in a considerable degree by any subsequent law; but, the instructions of the governor and council, which are dated the 15th of April, 1782, direct that upon receipt of a common warrant the surveyor shall make a descriptive and circumstantial entry of the same in a book to be kept for that purpose, accompanied by a location, such as the party directs, and if the location so directed should have been already made or taken under some other warrant, the surveyor, being required, is to produce and shew the former entry for the party's satisfaction. There is nothing further in the instructions that regards this point, except a direction that, to prevent disputes about the priority of entries or locations, no *assistant* shall receive or enter the location of any warrant whatsoever, that power being vested in the surveyor alone. I pass over the directions concerning the manner of making surveys and resurveys which will be shewn by the instructions themselves. To return to those matters which are regulated by law, the surveyors, until the year 1795, made their returns in the first instance to the register of the land office (for the western shore) to be by him delivered to the examiner general, but by the act of that year, ch. 88, all certificates were directed to be returned by surveyors to the examiner, on their respective shores, and such is now the prescribed course, but the certificates are in fact usually delivered to the parties concerned, who attend to their examination, and to their being lodged in the office.

The duty and power of surveyors relative to boundaries have been shewn in the 14th section of the act of 1781, under the head of general regulations, and need not therefore be repeated.

The act of 1789, ch. 35, "to restrain surveyors," &c. after reciting that many frauds and abuses may be practised by surveyors, or their deputies, if they be not by law prevented from taking up vacant land in their respective counties, ordains that no county surveyor, or deputy to a county surveyor, while he acts as such, shall take up either in his own name, or in the name of any other person for his use, or in secret trust for him, any land lying in the county of which he is surveyor or deputy as aforesaid, unless by virtue of a warrant of resurvey, obtained before his appointment, on land also held by him before his becoming surveyor or deputy surveyor; and grants are prohibited on lands surveyed contrary

to the tenor of this provision ; or being issued may be vacated, upon petition made to the chancellor, as judge of the land office, within two years from the date of the patent ; the proceedings upon such petition to be the same as those upon caveats to certificates.—The act further declares that if any county surveyor shall knowingly return, or any deputy surveyor shall knowingly procure to be returned, a certificate contrary to the tenor of the said provision, he shall, on conviction in any court of record, be fined a sum not less than twenty five pounds current money, nor more than one hundred pounds, one half to the informer, provided the fact be proved by other testimony than his own oath, and so declared to be by the jury on delivering their verdict.

By a supplement to this act, passed at November session 1792, ch. 15, the before mentioned prohibitions and penalties are removed in respect to lands owned by a surveyor or deputy before his appointment, or becoming his property afterwards by descent or devise, in either of which cases the surveyor or deputy surveyor may take a warrant to resurvey his said land or by a common or special warrant may take up any vacant land thereto adjoining, and have a patent issued therefor in the usual form ; and it is provided by the said supplement, that in the cases specified, the warrant shall be directed to the surveyor of some county adjacent to that in which the surveyor or deputy obtaining it shall reside, which neighbouring surveyor may execute it, provided he first takes an oath, to be endorsed on the warrant, that he will well and truly execute the same, according to the best of his skill and judgment, without favour, affection, or partiality.

By the act of April 1782, ch. 38, it is declared that no person shall act as a chain carrier unless he be first sworn or affirmed faithfully to carry the chain, which oath or affirmation any surveyor or sheriff may administer : and that no surveyor shall execute any warrant from the land office (or the general or any county court) unless the chain carriers be first qualified as aforesaid ; and it is declared to be the duty of every surveyor diligently to observe the conduct of chain carriers, and to take care that they faithfully execute their duty.

The 5th section of the act of 1795, ch. 88, provides that where a survey or resurvey shall have been made by a deputy surveyor, and the principal, or county surveyor, shall have died without having signed a certificate of such survey, the deputy who made the same shall have power to make out and sign a plot, and special certificate, stating the circumstances of the case, with an affidavit of the truth thereof annexed or endorsed, which certificate shall be valid, as if made and signed by the surveyor, and if any amendment or correction be necessary, it may be made by the said deputy, or

by such other person as the chancellor (or, on the eastern shore, the judge of the land office) may appoint for that purpose.

The 6th section provides for the case of a certificate duly returned by a county surveyor, but found to want correction after the said surveyor shall have resigned his office, in which case the chancellor (or judge) may order the correction to be made by the same surveyor, notwithstanding his resignation; the corrected certificate to be as good and effectual as if he had not resigned, and the chancellor, or the said judge, to assign to him for that service such fees as may under all circumstances appear reasonable, not exceeding those established by law.

The 11th section of this act ordains that it shall be the duty of surveyors, in returning certificates thereafter, to express the quantity and quality of the land included in the survey or resurvey, and subject to the operation of the warrant, with their opinion of the value of the same; and, in connection with this, it directs, further, that no exception shall thereafter be taken to any certificate of survey or resurvey made or to be made, by way of caveat in the land office, on account of improvements not being returned. It will be recollected that surveyors were by the act of 1781 to make return, on oath, of the *value* of improvements, but were not, as by this section, required to describe them. The design of this regulation is therefore intelligible, but the object of the one joined to it is not easily perceived. I suppose however that it was thought hard that a survey in other respects fair and regular should be condemned and made void, without any possible remedy, (as in the case where a caveat prevails) on account only of an omission, perhaps accidental, of some trifling matter coming under the denomination of improvements; but it can scarcely have been intended that the omission of improvements, if known by any means in the office, should not be a bar to the issuing of a patent until it was corrected.

The only remaining provision requiring to be here noticed is that of the act of 1800, ch. 70, which directs that where a surveyor receives for execution an escheat warrant to survey lands held in tenancy in common, part only of which is liable to escheat, he shall survey the whole of the land so held, and return a certificate thereof into the land office, specifying the value of the whole tract and improvements thereon, in order that after payment to the treasury of two thirds of the value of the escheatable part of such land, the party may receive a patent as a joint tenant for the undivided portion of the said land that is so escheat.

I shall conclude this chapter by noticing the appointment of the judge of the land office, and the examiner, for the

Eastern Shore, with their peculiar duties, as well as those of the treasurer and the register on that shore. The constitution, as has been seen, made no further provision for the particular convenience of that part of the state than that there should be a land office there, under the care of a register, who should have possession of the short extracts of certificates and grants therein mentioned, which extracts, whatever may have been the intent of this provision, have never been prepared. The constitution had also, without any reference to the land office, assigned a treasurer to the Eastern Shore:—here was an establishment sufficient for the issuing of warrants, but nothing else, and accordingly those powers, in the act of 1781 &c. which were common to the registers of both shores related only to that duty. The certificates of survey were all returned to the office of the Western Shore, where there was an examiner to ascertain their correctness, and a judge to direct the issuing of patents upon them; for, independent of contested cases, whenever the rules of descent might have to be considered a law character was necessary for the last mentioned purpose. In the year 1795 the general assembly conceiving that the footing on which the land office stood was not such as to afford to the inhabitants of the Eastern Shore all the conveniences of which the establishment was capable, and which were designed by the constitution, passed an act "respecting certificates of surveys made on the Eastern Shore," by which it was ordained that all certificates of surveys made on the Eastern Shore, by virtue of warrants of any kind issuing out of the land office of the said Shore after the first day of March succeeding the passage of the act, should be returned to the register of the land office for that shore, to be by him delivered to an examiner to be appointed by direction of the same act, who, if a certificate was "defective or imperfect," was to return the same forthwith to the register, by him to be sent back to the surveyor for correction; but, if it passed examination, was to deliver it to the said register to be recorded (immediately after patent should be issued thereon and not before) in a good and fufficient book, to be kept by him for that purpose. In a word, all certificates were thenceforward to be returned to the office from whence the warrants issued. The provision respecting the mode of return was altered in relation to both shores by the act of the same session, ch. 88, which directs that no certificate shall be received in the land office (meaning the office of either shore) unless the same be passed by the examiner general, which implies that they are to be returned in the first instance to that officer.

The act of 1795, ch. 61, now under consideration directed that the governor and council shall appoint an examiner for

the Eastern Shore, " who shall examine, and either pass or re-
" ject any certificate delivered to him, agreeably to the pre-
" sent or future rules and directions established or to be es-
" tablished for the government of the land office of each res-
" pective shore." It authorises them, in case of a vacancy, by refusal, death, &c. to make a new appointment, and directs that the said examiner shall take the oath of fidelity to the government and an oath (or affirmation,) to execute his office diligently and faithfully, without favour, affection, partiality, or prejudice.

In respect to the treasurer of the eastern shore the new system established by this act required no regulation but what regarded the valuation of escheats; and of improvements on cultivated land, the provision made by the act on this subject is a repetition of the former general one, the power of finally ascertaining the value of escheat land and of improvements, by either confirming or over ruling the valuation of the surveyor, being given, in respect to eastern shore certificates, to the treasurer of that shore. His receipt of caution or purchase money due on certificates, prior to their being patented, is mentioned in the act as a thing in course.

The 5th section of this act provided for the appointment of a judge of the land office on the eastern shore with powers similar to those vested in the chancellor in reference to the western shore land office; being, generally, to hear and determine disputes concerning the validity of surveys, and the grants of land, according to such rules and orders as were or might be established for the government and direction of the chancellor in the determination of like cases, and with all the authorities in respect to land affairs that were then vested in the chancellor of the state as judge of the land office thereof. But the next section gave for an appeal from the decisions of the said judge in the following words, viz.

" That if any party or parties aggrieved by any judgment
" or determination of the said judge of the land office for the
" eastern shore, shall have full power and right to appeal from
" any such judgment or determination to the chancellor of
" the state as judge of the land office: and in all cases of
" such appeals, where the judgment or determination shall be
" reversed, the chancellor shall direct the register of the
" land office of the western shore to return the transcript of
" the record to the register of the said land office of the east-
" ern shore, with an order, in the nature of a writ of *proce-*
" *dendo*, to the said judge, directing him to proceed in such
" case, and, as the case may be, to a new trial thereof, in the
" same manner as if no trial had taken place; and the opinion
" of the chancellor in the premises, shall be conclusive as to

" the question by him decided; and the said judge shall there-
" upon proceed in such case to a new trial thereof, and shall,
" in his discretion, award costs incurred as well on the appeal
" aforesaid as in the land office."

The 7th section directed the eastern shore register to transmit, annually to the commissioners of the tax for the several counties of that shore a list of all grants of patents issued out of his office; but concerning this provision, and a subsequent one contained in the act of 1797, ch. 89, requiring returns to be also made, to the commissioners, of certificates becoming ready for patent, it is not necessary to be particular, as what concerns returns to the commissioners to the tax has been finally regulated, in respect to both shores, by the act of 1803, ch. 92, already noticed.

By the 8th section it was directed that, in order to preserve an uniformity of practice in the affairs of the land offices of the western and eastern shores, the governor and council should cause to be transmitted to the register and examiner for the eastern shore all rules and orders which were then, or might thereafter be, made and established for the direction and government of the said officers, and of the surveyors, which said rules and orders were to be recorded by the said respective officers, and be subject to the inspection of any person who might reasonably require the same.

The 9th section gave to the register and examiner the same fees as were allowed to those officers on the western shore; further regulations have taken place on this subject by later acts which will receive in another place such notice as they may require. The 10th section declared that the several acts of assembly then in force for the government of land affairs, and of the respective officers concerned therein on the western shore, should be in force for the same purposes on the eastern shore, so far as they were not virtually altered by that act.

The 11th section authorises the issuing of common or special warrants from the land office on the eastern shore for deficiency in grants, and also in the case of caution money paid and the grant or certificate vacated, as before regulated by the act of 1781: but with a proviso that no warrant shall issue for such deficiency upon any grant issued or certificate made before the first of March then following, until the register of the western shore shall have certified that no warrant has been before issued for such deficiency or any part thereof, nor any satisfaction made for the same, (*b*) as far as appears by the records of his said office.

(*b*) the design of this provision was a very proper one, but it does not answer the purpose, the certificate required being such, as in some cases no investigation would enable the western shore register to give, without sheltering himself very much under the concluding part of the clause.

The 12th section gives to the register of the eastern shore land office a power, not possessed by the register on the western shore, of issuing subpoenas to summon parties to appear (before the judge of the said office) to maintain or answer caveats, or to require the attendance of witnesses, and also to issue attachments for contempt against witnesses not attending. It will be recollected that general regulations upon this subject, although I have not yet given them in detail, were prescribed by the act of 1782, ch. 38. According to these, all process necessary for bringing disputes in the land office to hearing and decision was to issue from the chancery, or from the general court of either shore. When, by the provisions of the law under consideration, disputes of this kind arising on the eastern shore were to be there heard and decided, it became necessary to furnish the judge with the means of compelling the attendance of parties and witnesses :—this might have been effected by a provision authorising the issue of subpoenas from the general court of the eastern shore on the requisition of the judge or the register of the land office ; but as the judge of the western shore office, being the chancellor, has in his own person, though in another character, the power of summoning, of enforcing attendance, and of punishing contempts, without the necessity of recourse to a foreign jurisdiction, it was perhaps thought more equal that the judge of the land office on the eastern shore, or the register in his name, should have the same power. In the consideration however of a (*c*) question which might arise whether the land office is or is not a *court* of record, the offices of the two shores would certainly stand on different ground in consequence of this regulation.

By an act of 1796, ch. 6, remedies were provided for some inconveniences arising to the inhabitants of the eastern shore from the regulations of the preceding acts.—Certificates it

(c) Such a question has actually been raised, and opposite opinions have been pronounced on it by the two persons in their time the most competent to judge of the nature of the establishment. When engaged in the management of internal revenues of the United States, I had occasion to know that exemplifications under seal were given from the western shore land office on paper not stamped, and I signified to Mr. Callehan that I held the exemplifications to be liable to the stamp duty. The return which he made to this intimation, was a written statement and argument, tending to shew that the land office was not a court, and I acquiesced in his construction. The late chancellor on the contrary seems in his evidence given before the general court, in the case of Hammond vs. Norris, relative to the practice of the land office, to consider the said office as a court, though wanting the power of fine and imprisonment, which he apparently views as not essential to that character. The eastern shore office has powers approaching very nearly to what are comprehended in those terms, and would in all likelihood have been confidently pronounced a court if its organization had been in view when the chancellor was giving the evidence in question.

will be recollected, were still to be returned, after examination, to the western shore land office under all warrants issued before the first day of March 1796, and the general regulation of the act of 1795, ch. 88, required that all certificates of survey or resurvey should thenceforward be returned by the first of July then ensuing, or within eighteen months from the date of the warrants. This act, after reciting that many inhabitants of the eastern shore had, through want of information of the last mentioned provision, omitted to comply with its directions, gave them until the first of July 1797, to return, and compound on, the certificates in question, which it protected in the interim from proclamation or other warrants, except so far as they were already affected by warrants of proclamation or of resurvey, or by locations actually made under common warrants. It is remarkable that rights obtained under special warrants, so called, are not also mentioned in this reservation. It corroborates an idea arising from some other passages, that those warrants were sometimes considered as a class of warrants of resurvey, since the land which they were to affect, viz. cultivated vacant land, was always supposed to have been formerly surveyed.

CHAPTER IV.

OF CONFISCATED PROPERTY.

IT has been already observed that land accounted vacant, as not having been granted to individuals or laid off and reserved for the use of the proprietary, was in no manner comprehended by the state laws under the description of confiscated British property: the same may be said of land escheat for want of heirs, and of vacancy taken up by survey but not compounded on. The disposal of these was thrown into the customary channel of the land office. But, besides the landed property of individuals which fell under the act of confiscation, or was forfeited for treason, the manors and reserved lands, generally, belonging to the proprietary himself, were placed in the care of commissioners appointed for that purpose, and the state's right therein from time to time disposed of by those commissioners, and ultimately by other officers, under a great variety of regulations, in which, so far as related to granting titles to the purchasers of such

property, it was found expedient to use the agency of the land office: It becomes necessary therefore to take some general notice of those regulations.

In regard to the confiscating act itself I have before mentioned that it embraced, in the first instance, all property (debts excepted) found within the state belonging to British subjects, but that other exceptions and reservations some positive, and others of a conditional nature, were contained in its subsequent provisions. It defined the persons who should be deemed and adjudged British subjects within the intention of the act; it left a liberal opening for such as had heretofore resided in the state, and had absented themselves on business, or even through a presumeable disaffection, not attended with other demonstrations of hostility, to return and secure their property from forfeiture. It appropriated certain property by name, as the act of June 1780, ch. 24, had provisionally done, for the redemption of bills of credit emitted under that act: it declared that the subjects of the state, creditors of British subjects, should be paid their claims out of the property of their individual debtors, and that those *citizens* of the state who had manifested their attachment to the new government, by exerting themselves in support of the independence of America, should be fully paid and indemnified, so far as their British debtors were solvent, out of the property confiscated by the act. It took necessary precautions against the concealment or embezzlement of books or other evidences of debts due to British subjects, and against gifts, grants, sales, devises or conveyances tending to defeat the design of the confiscation, by declaring fraudulent and void all such as should have been made and executed, after the nineteenth day of April 1775, and before the first day of December 1779, with intent to cover and protect the property from confiscation; but allowing as valid such transfers as might have been made between those dates in pursuance of an existing contract, or in payment of a debt; the proof of that fact to lie on the person claiming under such conveyance, &c. and, in the case of a precedent debt, the property not to have been conveyed for less than three fourths of its real value; but, if thus unequally transferred, the purchaser, grantee, or devisee either to pay (to the state) the difference of value, or to be considered only as a mortgagee for the security of his debt and interest. The act further declared that all the property confiscated, except what was, as before mentioned, appropriated for the redemption of the public bills of credit, and the payment of debts, should be subject to the disposal of the general assembly.

The commissioners just mentioned were appointed at the same session (October 1780) "for the purpose of preserving

" all British property seized and confiscated" by the former act and were declared to be " in the full and actual seizing and " possession of all British property seized and confiscated by " the said act, without any office found, entry, or other act " to be done." They were authorised to appoint proper persons to enter into and take possession of the said property, and to preserve it from waste or destruction, or to occupy or employ it for the benefit of the public. They were to make a return to the next general assembly of all the property discovered and seized as aforesaid, with its value, according to the ensuing general valuation of property in Maryland ; and, they were, in like manner declared in possession of all property within the state belonging to persons outlawed for treason, in respect to which description of property the same measures were directed.

By another act of the same session, which has been before noticed " to procure a loan, and for the sale of escheat lands" &c. a great part of the property confiscated as aforesaid was specifically pledged and set apart as a security for the intended loan ; to wit the several manors in the counties of St. Mary's, Kent, Charles, Queen Anne's, Dorchester, Somerset, and Worcester, belonging to the late proprietary, and remaining unsold by the commissioners of Frederick Lord Baltimore, except Beaver Dam and Chaptico manors in Saint Mary's county ;—and also the partnership property of a number of individuals known by the name of the Principio company, except the share or interest of one person, a citizen of Maryland, named in the act, and the shares of any other of the proprietors who might also be citizens of this or any of the United States.

By the same act it was directed that the property of several persons therein named, and known, as the act expresses it, to be British subjects, within the description and intent of the act of confiscation, and also such parts of the manors of Beaver dam and Chaptico as fell under the last mentioned act, should be laid off by the commissioners, in such small parcels or lots as they should judge most convenient and advantageous, and, after due notice, sold by public auction, one fifth part of the purchase money to be paid in specie, and the remaining four fifths in the bills of credit newly emitted. The state engaged to warrant and forever secure to the purchasers and their heirs any British property sold in pursuance of the act, and to protect them in the peaceable possession thereof, and the commissioners were enjoined to offer no property for sale but what they should be fully and clearly satisfied did belong to British subjects, and had not been sold or conveyed since the first day of December 1780. The spirit of speculation which was excited by those sales

soon converted a simple business into a very complicated one, producing new acts and regulations at every succeeding session of assembly until the subject of confiscated property became a science of some labour and difficulty. While I consider it as one which cannot be passed over, I feel that I should ill employ my time, and that of the reader, in dwelling minutely upon regulations that have for the most part spent their operation and interest. I shall therefore not aim at giving a detailed relation of every thing that occurred in the disposal of this property, but shall only notice and in the briefest manner that I can, those provisions that, either directly or in their results, have some connection with the land office.

By an act of May 1781, ch. 23, "for the emission of bills of credit" &c. the confiscated property before mentioned, with that of several other persons therein named, was directed to be sold by the commissioners at public auction, and bonds to be taken for payment of the purchase money in three instalments. On the giving of such bonds the purchasers were to be put in possession, and to have certificates of their purchases, and on full payment of principal and interest they were to have deeds for the property purchased. All the lands so directed to be sold, except those of the Principio company, were to be laid off by the commissioners in convenient parcels, and exposed to sale, either on the premises or at some public place in the county in which the property might lie. In respect to the property of the Principio company particular directions were given for saving and separating the interest of proprietors entitled to have their shares exempted from confiscation, and for disposing of the residue, leaving a choise of methods of partition, to be settled between those proprietors and the commissioners. By an act of the same session, ch. 35, the commissioners were directed to sell the White Marsh furnace and the Long Calm forge in Baltimore county late the property of James Russel and company, with all the lands and stock belonging to that company, for the purpose of securing the certain redemption of the bills of credit emitted by the state, and for which the confiscated property in general had been pledged ; and by another act (ch. 37) the property of the Principio company on Whetstone Point &c. which had been the subject of the particular provisions abovementioned, was directed to be sold, under new regulations respecting the shares of American citizens, before excepted from confiscation. By an act of November 1781, ch. 2, the commissioners were directed, in respect to the iron works &c. belonging to James Russell and company, to lay out the lands belonging to those works into small farms, reserving entire as much of the water and ground as might

be necessary to carry on the forges, and to lay out the remainder of the stream into as many mill seats as conveniently might be with a proper quantity of land on each side. The provisions of those acts which concern the modes of payment I do not think it of consequence to notice, further than that the sales were generally to be on credit for specified terms, on giving bond with two good sureties in each case.

An act of November session 1781, ch. 28, made a further specific enumeration of persons whose property was deemed to be forfeited, and directed it to be sold, unless any of the said persons should return within a limited time, and on taking their trial for any crimes committed against the state, or for any act tending to shew their election to become British subjects, or to adhere to the king of Great Britain, should stand acquitted of the treason or hostility alledged against them, in which case such persons were to have their property or its value restored. The commissioners of confiscated property were directed to call on all persons who had entered into agreements with the late proprietary, or his commissioners, for the purchase of manor lands, and had not paid for the same, to make payment to them, on receiving which they were authorised to convey the lands to such purchasers. It was further provided by this act that if any of the tracts of land therein directed to be sold should run into any adjoining land *bona fide* purchased, possessed, and held, by any citizen of the state before the year 1774, and still held and possessed as aforesaid, such interfering parts should not be comprised in the sales, but should, as by preemption, be assigned and sold to the aforesaid possessors, for such price as the commissioners might think just and reasonable.

By an act of November session, 1781, ch. 31, the commissioners were directed to sell certain confiscated lands of the late proprietary, which had by an act of 1780, ch. 38, been pledged for the payment of certificates issued to the troops of the state of Maryland in the service of the United States, to wit, Talbot's, or New Connaught manor in Cecil county, My Lady's manor in Baltimore, or Baltimore and Harford counties, and Monocacy manor in Frederick county. They were directed to lay off these lands in convenient lots, having regard to the possessions of the tenants thereon, and were to give notice of the times of sale to the officers and soldiers of the Maryland line with the southern army, whose certificates issued as aforesaid, were, so far as they had not been assigned away or transferred, made receiveable in payment for this property. It was provided that where a tenant became the purchaser for his own life, of the land occupied by him, or any part thereof, a deduction of ten per cent should be made

from the price of such purchase, and, in all sales, the rights of actual tenants, holding under lease, were reserved.

By an act of April session 1782, ch. 51, measures were taken for the sale of reserved lands, concerning which nothing had before been done except the keeping them from the operation of warrants. By this act the commissioners of confiscated property were authorised, under the direction of the intendant of the revenue, to offer for sale the reserves in St. Mary's, Charles, Baltimore, and Harford counties, Manocacy manor, and Gunpowder, North-east and Elk manors, with sundry other lands, and it was declared to be the intention of the general assembly that the tenants on manors, and settlers on reserves, should have the preference of purchasing the lands held or occupied by them on paying such reasonable and moderate valuation therefor as the said commissioners, or persons to be nominated by them, should on oath determine. In the following year an act was passed, in which, after a recital of these provisions, it was stated that the persons nominated as aforesaid had in a variety of instances done manifest injustice to the state by the lowness of their valuations, so that the commissioners had refused to give titlings to the register of the land office to issue warrants to survey such lands; and, authority was given to the intendant of the revenue, and the said commissioners, to revise all such valuations, and to affix a reasonable price to the land, giving a preference to tenants and settlers at the prices so affixed, and upon their refusal or neglect to comply with the terms, the property was, after due notice, to be sold to the highest bidder. It was provided further that upon any purchase made of the aforesaid lands, the commissioners should give a titling to the register of the land office for the shore on which the land might lie, who should thereupon issue a warrant to survey such land for the purchaser, and that upon return of a certificate to the land office, (of the western shore) and after the same should be examined and passed, the purchaser should be entitled to a patent therefor, "upon the same "terms, and under such regulations," except the payment of composition, "as in the case of a survey to affect vacant "land." This act also contained a provision that there should be a reservation to the state of one fifth part of all mines of gold and silver found on the said lands.

The next law which contains provisions of importance relative to confiscated property is what has been generally termed the consolidating act, passed at the session of 1784, ch. 55; by which the funds in general of the state, comprehending, among other objects, all confiscated British property unsold, and not specially reserved (subject to the disposal of

the general assembly) and all debts for confiscated property sold, were formed into a consolidated or aggregate fund for payment of the interest and principal of the public debt. I do not mean to notice any further the financial provisions of this act, but only to state what concerns the subject of manors and reserves. By the 9th section it was directed that all confiscated British property remaining undisposed of should be immediately sold by the intendant of the revenue, except New Connaught manor in Cecil county, and such parts of My Lady's manor and reserves as were settled on, and to the purchase of which a preference was given to the settlers by the law of April 1782 : the 10th section, referring to an act of April 1782, ch. 60, which vested in the commissioners a variety of powers not necessary to be here recited, makes further provision for compelling purchasers to fulfil their contracts, and for voiding those contracts where necessary, and recovering damages for detention and waste. By the two succeeding sections it was provided that the tenants of New Connaught manor should have a preemption as to such parts thereof as they possessed under lease from or under the title of Talbot, or any of the late proprietaries, at a reasonable and moderate valuation, to be determined by the intendant of the revenue, or by persons of his nomination, not living in, or within fifty miles of, Cecil county ; out of which valuation should be deducted the existing leases for lives or years, in the computation whereof the length of the term for years, the age and health of the tenant for life, and the chance of the reversion, were to be considered, and if the tenants should refuse to purchase on the terms so adjusted, the intendant was to sell the lands for the highest price that could be obtained. The same preference of purchase was given to the tenants on any of the manors, and the settlers on the reserves, in respect to such parts of the said manors and reserves as they then severally possessed or occupied, and with the same provisions as to valuation. In either case the improvements on the land were not to be valued.

The completing of titles to purchasers of confiscated property had been hitherto but partially regulated. In 1785 an act passed (ch. 46) " ascertaining the mode of granting " titles to the purchasers of certain confiscated British pro- " perty." By this it was provided, that the purchaser of any land lying within any manor or reserve, and sold by the intendant, or the commissioners of confiscated property, should " upon return of a certificate of survey thereof to the " land office for the western shore, and the same being exa- " mined and passed, and after the expiration of six months " from the said return, and upon payment of the purchase " money, to be endorsed on the said certificate, be entitled

" to a patent for such land, in fee simple, unless the chan-
" cellor, upon hearing on any caveat to the same" should otherwise determine, " and that such certificate and patent " should be recorded among the records of the land office :" it provided further that certificates returned at any time before the first of January 1787, by any person who had been appointed by the intendant to survey the said lands should be received by the examiner general, and be of the same validity as if executed and returned by the surveyor of the county. The time for these returns was afterwards extended by several acts, the last of which (November 1802, ch. 7) made the certificates in question receivable up to the first of November 1803, and no longer.

By other provisions of this act the governor and council were authorised to appoint as many additional surveyors as they should think proper to complete these surveys, whose certificates were to be received in like manner as those of the surveyors appointed by the intendant. Caveats were permitted for six months from the date of return, and the chancellor was to hear and determine on them upon the principles governing in other cases. Lands already patented were to be passed by deed, executed by the chancellor, upon the payment of the purchase money, and upon a certificate of sale having lain six months in the land office ;—the deed to be prepared by the party, and, when executed and delivered by the chancellor, to be recorded, within six months, in the office of the general court, or the court of the county in which the purchaser resided, or should have made the purchase. It is proper here to mention that, previous to these regulations, the commissioners had in many instances executed deeds of conveyance to the purchasers of confiscated property, which being afterwards deemed inoperative, it has been provided by a late act (1805 ch. 99) that persons holding and claiming lands in virtue of such deeds, and producing satisfactory proof of their equitable titles, shall receive deeds executed as aforesaid by the chancellor, which being recorded among the records of the county court where the lands lie, are valid and effectual to transfer the right title and claim of any British subject, or the right of the state created by any former act of assembly, to such lands.

The last section of the act of 1785, vested ample powers in the chancellor for the adjustment of all disputes and questions that might arise between different purchasers of the aforesaid property, or between such purchasers and other persons, relative to the same. He was authorised by this section, *before the title of the state should be granted or conveyed*, to determine disputes between purchasers, *in a summary way ;* and, for his information, to cause surveys to be

made and certificates to be returned: to order witnesses to be summoned by the register of the land office of the western shore, and to enforce obedience to such summons by attachment. In case of dispute between a purchaser and another person, if the chancellor should be of opinion that the former could derive from the state a title to a part only of the land purchased, and that the other party had also a right to part thereof, he was authorised to enquire by means of a commission to five competent and disinterested persons, what damage the purchaser would sustain by the loss of such part of his purchase, which damage they were to certify to the chancellor, who thereupon might proceed to adjudge and determine the damage so sustained, and cause a certificate of such his determination to be made by the register in chancery, which certificate being produced to the treasurer was to be that officer's authority and direction to enter the amount of such damage to the credit of the bond passed for the property, or if the purchase money had been paid, to refund the amount aforesaid (in money or in *certificates* according as the payment had been made) and, if no bond had yet been given, the damage so certified was to be deducted, in taking the same, from the sum agreed to be paid for the land: In all the cases aforesaid, the chancellor had power to award costs in his discretion, and to enfore obedience to his orders on that head by attachment and commitment in case of non-payment.

An act of 1786 ch. 44, after setting forth a variety of inconvenient and perplexing circumstances arising from the manner in which confiscated property had been sold, and in particular from the selling of land by the acre where the quantity was not ascertained, and taking bonds on a calculation of the greatest supposed quantity, directed that the late commissioners and the late intendant of the revenue should, without delay, cause the lands by them respectively sold, (so far as the amount of the purchase money depended, by the contract, eventually, on the quantity of land,) to be accurately surveyed, and certificates thereof returned, with general illustrative plots, shewing the interference of the lands sold with each other, or with other adjacent and older tracts, and noting any thing which might affect the title or interest of the purchasers; and where it appeared that the said purchasers were entitled in justice to any discounts or allowance, to certify the same with the reasons for their opinion to the chancellor, who was authorised to pass his order thereon, or to enquire and proceed as if he was originally possessed of the matter by petition, and to make such allowance as he might judge proper, as also to pass such orders as equity might require where it appeared that a purchaser had an equitable title under

the land office terms of Pennsylvania, and the agreement between the two late proprietors, or where any sale should be acknowledged by the commissioners or the intendant to be a mere mistake so that the purchaser could hold no part of the land; and the chancellor was authorised to grant any lands held under an equitable title as aforesaid where the office terms of Pennsylvania had been complied with, and for which a grant ought therefore to have passed, in the same manner as he was before empowered to direct grants for lands within the limits of Maryland which had been theretofore actually granted by the Pennsylvania proprietaries. The commissioners were empowered to stay executions where the purchasers of confiscated property should declare by affidavit that they had, in their belief, just ground or cause for relief from their bonds or contracts, in whole or in part, specifying the particular ground of that belief, and it was provided that where, in the case of any lands sold by the commissioners or the late intendant, the purchasers should afterwards be legally deprived of any part thereof (by persons having titles not known at the time of sale) whereby the remainder would become of inconsiderably value, the chancellor, upon a view of all circumstances, might make such decree therein as equity and justice should require.

By an act of 1788 (ch. 37) a remedy was provided for some hardships experienced by certain purchasers of confiscated property, by which the rules of the land office were in some degree affected. Persons who had purchased different parcels of leased and vacant land within the proprietary's manors or reserves in Baltimore county, adjoining their own lands, in order to avoid the expence of separately surveying all those parcels had them included in resurveys with their other lands, but could not obtain patents, the resurveys being irregular, since the county surveyor, who had made one of them, could not legally include those leased lands, and the special surveyor, who made another, was not authorised to resurvey patented lands. The proceeding was doubtless contrary to all existing regulations—The certificates were however directed by this act to be received into the land office, and patented as regular resurveys, and further resurveys of the same kind were authorised in all similar cases.

Among the lands sold as confiscated property by the intendant of the revenue, who had succeeded the commissioners in that business, were those called the Nottingham lot lands, and the Welch tract, in Cecil county, the settlers on which who became in general the purchasers, by petition to the assembly, in 1788, alledged that they held under equitable titles acquired from the proprietaries of Pennsylvania while the boundaries of the two provinces were in controversy

and unsettled, which titles were secured to them by the agreement of 1732: but, that not having been able, since, to acquire legal titles, their lands had been sold as aforesaid. Without dwelling on all the provisions of the act which was passed in consequence of this petition, I shall only say that the relief prayed for was granted, the chancellor being authorised upon the proof of equitable titles, obtained prior to the fifteenth day of May 1724, by virtue of, or under, "any "grant, warrant, lease, patent, licence, or agreement" from or with any former proprietor or proprietors of Pennsylvania or their agents, to direct patents to issue for the lands so claimed, upon the payment of fifteen pounds for every hundred acres thereof, the fees of office, and the cost incurred by the state in the making and returning surveys of the said lands, as well as the costs of suit incurred on the bonds of the parties, so far as they had not already been remitted by resolves or acts of assembly; and all difficulty in deriving these equitable titles from the first acquirers down to the actual claimants was very liberally obviated; those claimants having only to prove the original grant, lease, &c. and to shew their own immediate acquisition by descent or purchase, without any notice of other intermediate titles. By a supplement to this act, (1789 ch. 14) all persons similarly circumstanced with the purchasers aforesaid were to have the same relief.

There are various other provisions respecting confiscated property which it would be proper to notice if the design was to treat of this subject otherwise than as a branch of the business of the land office, but as all that remains has relation rather to the subject of finance than to that of land affairs, which perhaps may be said of some matters that have been noticed, I shall pursue this enquiry no further, but pass to another class of laws and regulations having in like manner a partial, but a somewhat closer connection with the operations of the land office.

CHAPTER V.

OF GRANTS OF LAND FOR MILITARY SERVICE, AND PREEMPTION TO SETTLERS, WESTWARD OF FORT CUMBERLAND.

IT has been already intimated that, in the course of the revolutionary war, certain bounties of land had been promised, for the encouragement of the recruiting service. If other, and more general, bounties had not been expressly promised

by any act or resolution of the general assembly, (for the laws heretofore referred to reached no *officers* but such as had enlisted a certain number of recruits,) a more equal and liberal arrangement was certainly in contemplation, though apparently deferred until the resources of the state in the article of land should be better ascertained. Accordingly, an ample provision was made by the act of 1781, opening the land office, for fulfilling the engagements, or the intentions, of the state of Maryland towards its officers and soldiers, by the first enacting section of that law, which has been already given at large, and which, in substance, appropriated all the lands westward of Fort Cumberland, *reserved* or otherwise, except so far as they were fairly covered by warrants and locations in right of American citizens, and actually paid for, to the purpose of discharging the aforesaid engagements.

Under this general appropriation the lands remained until the session of April 1787, when a resolution was passed authorising the governor and council to appoint and employ some skilful person to lay out the manors, and such parts of the reserves and vacant lands, belonging to the state, lying to the westward of Fort Cumberland, as he might think fit, and capable of being improved, in lots of fifty acres each. In virtue of this resolution Mr. Francis Deakins was appointed for the purpose therein mentioned, who, before the fall session of 1788, had finished the survey, and had returned a general plot of the country westward of Fort Cumberland, on which four thousand one hundred and sixty-five lots of fifty acres each were laid off, besides sundry tracts which had been patented, with a distinction, on the plot, of the lands which had been settled and improved, from those that remained uncultivated; and had also returned in two books, *certificates* of all the lots beforementioned.

The legislature, being now possessed of the necessary information, passed an act (November 1788 ch. 44) "*to dispose of the reserved lands westward of Fort Cumberland, in Washington county, and to fulfil the engagements made by this state to the officers and soldiers of the Maryland line in the service of the United States*," in which, after reciting the acts by which bounties of land had been promised for military service, the appropriation of 1781, the appointment of Mr. Deakins, and all the facts above stated; and adding that it appeared there were three hundred and twenty three families settled on six hundred and thirty six of the aforesaid lots, which those people had improved and cultivated, they ordained as follows, viz. that whereas, according to the most accurate account that could then be rendered by the auditor general, it appeared that there had been about the number of two thousand four hundred and seventy-five soldiers entitled

under the several acts of the legislature to the bounty of lands, and that there ought to be about one hundred lots set apart to fulfil the engagements of lands to recruiting officers,—the quantity of two thousand five hundred and seventy-five of the aforesaid lots, (lying in the most fertile part of the county, and contained in the following limits, to wit, *beginning at the mouth of Savage river, and running with the north branch of Patowmack river to the head thereof, then north with the ("present") supposed boundary line of Maryland until the intersection of an east line, to be drawn from the said boundary line with a north course from the mouth of Savage river, would include the number of lots aforesaid,)* should be distributed by lot among the said soldiers and recruiting officers, and their legal representatives, by a commissioner or commissioners, not exceeding three, to be appointed by the governor and council for that and other purposes presently to be noticed.

This provision went to the fulfillment of all the engagements acknowledged and recited by the act: but the legislature thought proper to go further, and proceeded to direct that, *part of* the remaining lots should be distributed, by lottery, among the officers, and the representatives of the officers of the Maryland line who served to the end of the war, who were deranged by any of the reforms of the army, who were killed, or died of their wounds received in battle, those who were disabled from further service by wounds received, and in consequence thereof retired, and those who died a natural death while in the service with the army; each officer, or his representative, to have four lots: that the lots so granted should be adjacent to those directed to be distributed among the soldiers, and should be contained within the following limits, viz. by extending the aforesaid north course from the mouth of Savage river until its intersection with an east line to be drawn from the aforesaid supposed boundary of Maryland would include the requisite number, allowing to each officer four lots as aforesaid; and that the said lots should be distributed, by lot, among the said officers, and their representatives, by the aforesaid commissioners, each ticket to contain four lots, contiguous to each other, or as nearly so as might be.

The act directed further that the auditor-general should furnish the said commissioners with a list of the officers and soldiers entitled as aforesaid, and that no draught should be made for any officer or soldier whose name was not on that list; that after the draught (or lottery) the name of each officer and soldier should be endorsed on the ticket containing the number or numbers (written at length) which had been drawn by or for such officer or soldier, who (or his represen-

tative) should thereupon have an estate in fee simple in the lot or lots so drawn and endorsed, without any patent, deed, or grant, to be issued for that purpose.

In order to shew in one view all the provisions of this act relative to the military claims, (in virtue of which provisions it is proper here to observe that the distribution of lands, as directed, shortly after took place) I have postponed noticing those which regard the families reported by Mr. Deakins to be settled on a part of the lots laid off as aforesaid, as well as some important general directions which will presently be brought into view. By the first enacting clauses following the *recital* which has been mentioned, it was directed that a preference should be given to those *settlers* to purchase the six hundred and thirty six lots by them respectively settled, not exceeding the quantities registered and noted by the surveyor in the books aforesaid, and at not less than five nor more than twenty shillings per acre, to be discharged in three equal payments, on the first of September in the years 1789, 1790, and 1791 : in default of any of which payments the land in respect to which such default occurred should be liable to *proclamation*, in the usual manner, by any citizen of the state of Maryland, and that for the ease and convenience of the people, a proper person or persons, not exceeding three, should be appointed by the governor and council, who should go into the neighborhood, and have power to decide all disputes which might arise concerning preemption, and should value the said lands, those of the best quality at not more than twenty shillings per acre, those of the worst at not less than five shillings, and those of an intermediate kind according to their quality, having regard to the extreme prices aforesaid :—by other sections it was provided that, on payment of the valuation by any person admitted by the commissioners to be entitled to a preemption, patent should issue to such settler, or his representatives, he or they paying the usual fees of office ; that, after satisfying the claims aforesaid, as well of settlers as of officers and soldiers, the remainder of the said lots westward of Fort Cumberlard should be sold for any kind of specie certificates of the state, and that the purchasers, after payment of the purchase money, should be entitled to patents from the register of the land office, on paying the usual fees ; that the aforesaid general plot and books of certificates should be lodged in the land office, and that the said books of certificates of the four thousand one hundred and sixty five lots aforesaid should be considered to all intents and purposes as record books of the land office ; and it was further directed that the commissioner or commissioners before mentioned should make a record of all valuations by

them made, and of all the lots distributed among the officers and soldiers aforesaid, and of all lots sold by them in virtue of this act, and return the same to the register of the land office, to be by him safely kept. These, which as well as the plot and books of Mr. Deakins were returned agreeable to this direction, are also considered and used, in some sort as record books of the office. But they have not been so denominated by law.

It was further provided that the privilege of roads and waters through all the aforesaid lands should be reserved to the public, and the act contained two remarkable suspending clauses, by one of which were noticed certain lands "patented "or taken up within the manors and the reserves aforesaid" in respect to which the general assembly declined to "give "orders for any disposition thereof," but directed or recommended that the cases of each kind should be stated by the governor and council, and the attorney general's opinion taken, so that the claim of the state might be prosecuted or relinquished, as law and justice might require. The other had reference to the line by which Mr. Deakins had bounded his aforesaid general survey, which was declared to be, in the opinion of the general assembly, for within that line to which the state of Maryland might rightfully claim as its western boundary, with a further declaration that, *at a time of more leisure, the consideration of the legislature ought to be drawn to the western boundaries of the state, as objects of very great importance.*

The only further provisions of this act which require to be noticed are those by which all remaining reserves were taken off, and all the vacant land in the state made liable to be taken up in the usual manner by warrant, at the rate of three shillings and nine pence instead of the former price of seven shillings and six pence per acre, which as they must be spoken of in another place, I shall not here dwell upon, but shall proceed with what further concerns the settlers westward of Fort Cumberland.

By an act of 1789, ch. 48, upon a representation that the times fixed for the payments of those settlers were inconvenient in respect to the season of the year, the first day of May in 1790, and the two following years, was substituted for the first of September 1789, &c. but saving any rights acquired by proclamation warrants since the said first of September, and requiring that those who had affected or might thereafter affect those lots by proclamation should pay such composition money as the original settlers were to pay for the same. By an act of 1791, ch. 85, the treasurer was empowered to receive from the settlers, at any time thereafter, the whole or any part of the money due on their several contracts, and there

was to be no forfeiture of any payment already made ; but still, with a saving of the rights of any persons who had already proclamated, or might after the first day of September 1792 proclamate, any of the said lots. An act of 1792, ch. 8, again extended the time allowed for payment, viz. to the first of May in the three succeeding years : By the act of 1793, ch. 62, upon a suggestion that many of the lots had been proclamated for the benefit of the settlers, by other persons, who had assigned over to them the proclamation warrants, and that these settlers were precluded by the predicament in which their lands stood from availing themselves of the last mentioned terms of payment, it was provided that, wherever such an assignment appeared by endorsement on the warrant, the treasurer might receive from the parties who had taken the warrants one half of the money remaining due, on or before the first of May then ensuing, and the other half by the first of May 1795, and patents were, on compliance with these terms, to be issued as if the whole money had been paid within a year from the date of the warrant. By an act of 1794, ch. 30, after the recital of a misapprehension of the settlers whereby the payments of the one half by the first of May in that year had been neglected, but the money tendered between that day and the expiration of the proclamation warrants, when the treasurer would not receive it, whereby they were obliged again to proclamate their lots,—directed that, wherever proclamation warrants had issued for lands of this description, the treasurer should receive the balances due for the same at any time while the warrants remained in force, provided it should appear by endorsement that they were assigned as aforesaid. The treasurer was further directed to receive from those settlers whose lands were not proclamated the balances due therefor at any time before they should be in that predicament, and the register of the land office was instructed to issue patent to any of the said settlers who should comply with the provisions of this act, as if the money had been paid under the proclamation warrants, any former law notwithstanding.

The acts of 1791 and 1793, just mentioned, contained other provisions which have not been noticed. By the first it was ordained, in respect to those settlers who had yet made no payment whatever, that if any such settler should not, by the first of May then following, pay at least one third of the valuation, the land awarded to him should be sold, within the county where it lied, by a person to be appointed by the governor and council, at public or private sale as might be deemed most advantageous to the state, at not less than five shillings per acre ; the person so appointed to take bonds, payable in three equal parts by the first of September in the three

following years ; that, whereas there were settlers on other lots than those which had been disposed of, the (*a*) person so to be appointed should sell all such lots at not less than three shillings and nine pence per acre, giving a preference to the occupants, and taking bonds as aforesaid : he was further authorised to sell all the surplus lots theretofore appropriated, at not less than one shilling and eight pence per acre, payable as aforesaid. The register of the land office was directed to issue patents to any of the settlers before mentioned who should have complied with their contracts, including all such lots as were contiguous to each other in one patent : the bonds taken were to be a lien on the lands of the obligors from their dates, and it is by this act that vacant land in Allegany county was set at a lower price than in other parts of the state, it being directed by the 8th section "that all vacant lands in the said county may hereafter be taken up "by common or special warrant, or warrant of resurvey, in "the usual manner, at two shillings and six pence current "money per acre, one half to be paid at the time of obtaining "the warrant, and the other half on the return of the certifi-"cate ;"—composition under warrants already issued to be paid at the former rate.

By the act of 1793, three persons therein named were appointed commissioners, for the purpose of settling and adjusting the boundaries of the lots of the aforesaid settlers, as the means of preventing litigation among them.—Upon application to the said commissioners by any owner of such lots desirous to establish his boundaries, they were to appoint a time for that purpose, and to give, by advertisement affixed at the door of the court house, and other public places, a previous notice of thirty days, or, if any of the parties interested resided out of the county a notice of forty days, of the intended proceeding. They had power to summon witnesses, swear chain carriers, &c. and were authorised to mark and bound the lots according to their adjudication and adjustment of the original location thereof, of which they were to return certificates to the clerk of Allegany county to be recorded, and if no suit or action was brought within seven years after the recording such return, to call in question the adjudication of the commissioners, it should be taken as conclusive evidence of the original location, or, if the adjudication should be confirmed by verdict of a jury in any suit brought as aforesaid, it should be conclusive in the point confirmed by the jury, and between the same parties and those claiming under them, with a proviso that every infant, married woman, insane person, or person in prison or

(*a*) A commissioner was in consequence appointed, of whose sales, &c. a return remains in the land office.

beyond sea, should have five years after the disability was removed to commence an action. The power of these commissioners was limited to the first of January 1796, and it was then suffered to expire, but by an act of 1804 ch. 67, the same number of commissioners has been again appointed, with these and other more extensive powers, being authorised on the application of any possessor of a lot or lots westward of Fort Cumberland, suggesting *manifest* errors in the certificates or patents of such lots, or in any line thereof, to correct and adjust the same in their judgments according to the original location thereof; a certificate of which location under the hands and seals of the acting commissioners, is to be returned to the clerk of the county court, and being recorded by him is to have the same effect as an adjudication made by the former commissioners, "any expression in said "certificate of survey or patent, to the contrary, notwithstanding." This law is to continue in force until the year 1810, and has a peculiar bearing upon the records of the land office, but in speaking of so recent an act of the legislature I do not permit myself to make any further observations.

By an act of 1797, ch. 31, the register of the western shore land office was authorised and directed to make sundry corrections in the returns of the commissioners appointed as before mentioned, for the distribution of lots to officers and soldiers, and the adjusting the preemption of settlers, by erasing *numbers* erroneously assigned to particular persons and inserting opposite to their names other numbers specified in the act, which insertion was to be evidence of title equally with the original entries of the allotments made by the said commissioners. By subsequent acts the register was directed to correct and alter the location of certain lots in the particulars therein specified, the said alterations to be made by him in the certificates, the patents, and the records thereof, but no existing rights to be affected by those proceedings. These acts were passed after the expiration of the first commission just spoken of, and before the late renewal and extension of the authorities thereto attached.

At the session before mentioned of 1804 an act was passed reciting, in substance, that large bodies of land in Allegany county had theretofore been surveyed and were then lying on certificate, liable to warrants of proclamation, but that from the great quantities of bad land included they were not likely to be taken in the whole for purposes of cultivation; that by the rules of the land office these surveys could not be taken in part, and that it would be of public and private benefit, by vacating the certificates, to put those lands in a situation to be taken up in parts as vacant land. It was therefore ordained by this act that all certificates of the before mentioned des-

cription which should not be compounded on, or secured by proclamation, before the first day of August then ensuing should on and after that day be deemed vacated, null, and void; placed upon the same footing as other vacant land in Allegany county, liable to be affected in the same manner, and in any quantity, without regard to the former surveys; provided that such lands should not be liable to be affected by any warrant issued or to be issued before the first day of August aforesaid.

And, by another act of the same session, ch. 105, all the land laid off and returned in lots as before mentioned which remained unapplied and undisposed of, and continued to be the property of the state, were liberated from the provisional dispositions under which they had lain, and were made liable to be taken up and secured like other vacant land in Allegany county.

These are the principal, and I believe all the material, provisions of the acts of assembly relative to military, and settlers, lands westward of Fort Cumberland. Some other matters have been directed by resolutions of the two houses which, so far as they may require notice, will receive it in another place; but besides that these and other resolutions are generally for the benefit of particular persons, and are oftener exceptions from, than evidences of, an established practice, I do not suppose them to be, in any point of view, precisely upon a footing with laws, and have not thought it expedient hitherto to notice them. So far, however, as they declare the sense of the legislature upon points of general concern, I shall not omit to give them proper attention.

CHAPTER VI.

OF INDIAN LANDS.

IN declining, in the former book, to give an historical account of the disputes, treaties, and other transactions between the proprietary government and the indian natives of the country, I promised nevertheless to notice what might concern the lands held by particular tribes, under the guaranty and protection, not only of that, but also, of the present government. In order, however, to make one work of it I have reserved this subject for the present book, and perceiving it to have but little connection with the practice of the land office, I shall not dwell very minutely upon it. As to the events

leading to that state of things in which it became expedient for the original owners of the soil to receive new titles to small portions of their territory from those who had so recently been, themselves, either purchasers or intruders, they cannot fail to become, shortly, an object of enquiry in something like a regular history of the state. I shall, therefore, not attempt to trace those circumstances, but shall only observe that after various contentions and accomodations, resulting generally in new disadvantages to the natives, and the gradual decrease of their numbers within, or adjoining to the English settlements, the indian inhabitants on the Choptank and Nanticoke rivers on the eastern shore became desirous of being secured in the possession of lands by grant from the proprietary; that, in consequence, a grant was made to the Choptank indians in the year 1669, and one to the Nanticoke indians in the year 1704, in respect to which grants a variety of provisions and modifications took place by subsequent acts of assembly, the most important of which I shall here examine, confining myself altogether to what has been done by law; for, as to the incidents and proceedings of an intermediate and preparatory nature, they are entirely too numerous to admit of any recital within the limits of this work.

In respect to the grant to the Choptank indians, I cannot give a better account of it than by transcribing the reverend Mr. Bacon's note on the law making that grant. The title only is given in his edition, being "an act for the continuation of peace with, and protection of, our neighbors and confederates, *Indians* on Choptank river," and the following is extracted from his remarks.

"This act, on account of the fidelity of the Choptank indians in delivering up some murderers, &c. settles upon them, and their heirs forever, all that land on the south side of Choptank river, bounded westerly by the freehold now in possession of William Dorrington, and easterly with secretary *Sewall's* creek, for breadth;—and, for length, three miles into the woods: to be held of his lordship under the yearly rent of six beaver skins; and is confirmed among the perpetual laws by 1676 ch. 2."

By an (*a*) act of 1704, ch. 58, the bounds of a certain tract of land were ascertained, to the use of the Nanticoke indians in Dorchester county, so long as they should occupy and live upon the same. This act after stating it, in the preamble, to be "most just" that the indians, the ancient inhabitants of the province, should have a convenient dwelling place, &c.

(*a*) These lands had been originally ascertained and bounded by an act of 1698, ch. 15, which falling under the general repeal of 1704, ch. 77, was in a manner reenacted by this act, it being the same in all respects except the enacting style which as this was passed during the suspension of the *proprietary's* government was necessarily different.

and especially the Nanticoke indians in Dorchester county, who for many years past had lived in peace and concord with the English, and in obedience to the government,—proceeded to declare as follows.

" That all the land lying and being in Dorchester county, " and on the north side of Nanticoke river, butted and " bounded as followeth: (beginning at the mouth of Chick- " awan creek, and running up the said creek, bounded there- " with, to the head of the main branch of the same, and from " the head of the said main branch, with a line drawn to the " head of a branch issuing out of the north west fork of " Nanticoke, known by the name of Francis Anderton's " branch, and from the head of the said branch down the " said Anderton's branch, bounded therewith, to the mouth " of the same, where it falls into the said north west fork; " and from thence down the aforesaid north west fork, " bounded therewith, to the main river; and so down the " main river to the mouth of the aforesaid Chickawan creek;) " shall be confirmed and assured, and by virtue of this act is " confirmed and assured, unto *Panquash* and *Annotoughquan*, " and the people under their government, or charge, and their " heirs and successors forever; any law, usage, custom, or " grant, to the contrary in any wise notwithstanding: To be " held of the lord proprietary, and his heirs, lord proprietary " or lord proprietaries of this province, under the yearly rent " of one beaver skin, to be paid to his said lordship, and his " heirs, as other rents in this province by the *English* used " to be paid": and it was provided by this act that if the indians should desert the said lands, the former grantees of the proprietary might enter upon the same, and that those grantees should not be liable to the payment of quit rents until they should be in actual possession thereof.

By an act of 1711, ch. 1, upon a suggestion that the lands formerly laid out for the Nanticoke indians were worn out, and insufficient for their use, commissioners were appointed to lay out three thousand acres on Broad Creek in Somerset county, to the use of those indians; the lands to be valued by a jury, and the value to be paid to the owners by the public. They were to be bounded, and the lines marked on trees, or by other land marks, to perpetuate the same. The commissioners were to return fair certificates of their proceedings to the provincial court, and to the court of Somerset county, to be therein recorded. The lands so laid out and paid for were vested in two persons named in the act, in trust to the use of the indians, so long as they should occupy the same, and to be afterwards disposed of as the general assembly should direct, and such laying out, and payment were to

be a perpetual bar against any claim derived from the owners aforesaid.

By an act of 1721, ch. 12, the governor was authorised to appoint commissioners to resurvey the indians' lands, and ascertain the bounds thereof: the commission was to continue in force for three years, but the proceedings under it were to be perpetual. Commissioners were in consequence appointed, and their survey was confirmed by act of 1723, ch. 18, as being agreeable to the original grant of 1669.

By the aforesaid act of 1723 on a complaint, by the indians, of encroachments upon their lands, it was enacted that the Nanticoke indians, and their descendants, should have free and uninterrupted possession of the tract lying between the north west fork of Nanticoke river and Chicucone creek, as bounded by the act of 1698, ch. 15, so long as they, or any of them, should think fit to use, and not totally to desert and quit claim to the same; and they were debarred from the right of selling, or leasing for term of years, any part of the said land. The like possession was confirmed to the Choptank indians, of the tract in Dorchester county, on Choptank river, as surveyed and laid out under the commission abovementioned: They, also, were interdicted from selling, or letting to farm, any part of their said lands, except such part as lied to the eastward, southward, and westward of the lines formerly run from the head of Sewall's creek to William Barrington's bounded tree, on the exterior bounds of the land, in pursuance to an ordinance of the assembly then made, and all purchases or leases not comprised within the aforesaid exception were declared void. No lease already made, either for term of years or for lives, was to be of force longer than for seven years from the end of the (then) present session, and all sales, gifts, grants, or leases, made by the said indians since November 1721, of any lands on the south side of Sewall's creek, and the southern branch thereof, and within the lines run as aforesaid as the exterior bounds of the land, were declared void and of no effect, but means were provided at the same time for enforcing the regular payment of rents accruing to the indians on leases not contravening those provisions; and purchases *bona fide* made since the year 1721, or thereafter to be made, not within the aforesaid prohibition, were confirmed to the purchasers and their heirs forever, provided such purchases were made when the indians were sober, and of sound and perfect memory, and the consideration paid to them before executing the deeds of sale, and such deeds acknowledged by them before the county court, or before one or more members of the council; the said deeds to be otherwise void and of no effect.

By an act of 1704, ch. 39, it had been ordained that any person cutting or carrying away timber from lands within the indian bounds, whereof other persons had the fee, should be deemed trespassers, and should be liable to damages on action of trespass, as if the persons having the fee had also the possession of the land.

By act of 1741, ch. 12, Charles Sewall, esq. was satisfied for such lands, laid out for the Choptank indians, as his father Nicholas Sewall had not been paid for in his lifetime; and, it was also enacted that when those indians should totally desert their lands they should be sold for the use of the public.

By act of 1756, ch. 9, the county courts were empowered, upon petition, to determine, in a summary way, all complaints against persons holding indian lands, and refusing to pay the rents agreed for, and to give judgment thereon, and award execution, with costs.

By the same act it was ordained that on complaint made of waste or trespass upon the indian lands, and the same appearing by the oath of one sufficient evidence, the county court should issue their warrant to the sheriff to summon a jury of eighteen freeholders to appear on the lands on a certain day, who, upon oath, should assess the damages under their hands and seals, or under the hands and seals of any twelve of them that should agree; which inquisition should be returned by the sheriff under his hand and seal to the next county court: The sheriff to summon and swear to the jurors all such witnesses as should be required; the court to give judgment for the damages mentioned in the inquisition, unless cause shewn to the contrary, and the party against whom judgment should be given to pay the officers fees, &c. Upon complaint of the indians, any two justices might go upon their lands, and finding the complaint to be well founded, might issue their warrant to the sheriff to put out any person holding land upon pretence of renting it from the indians, and to deliver peaceable possession to the said indians: such person to pay fees, &c.—Persons against whom judgment should be given in virtue of this act might appeal to the provincial court, giving security as in other cases; but such judgment not to be reversed for want of judicial process if it appeared that the defendant was legally summoned, and was not condemned unheard.

The last act of the *provincial* assembly on this subject was that of 1768, ch. 7. In the preamble to this act it was set forth that the greatest part of the tribe of Nanticoke indians had left the province, and that the few still remaining were, as appeared by their petition, desirous also to depart, and join themselves with the indians of the six nations, but prayed that

some compensation should be made to them for quitting claim to the lands formerly granted to their tribe; and had, under the sanction of the superintendant of indian affairs for the northern department, given a power of attorney to a certain Amos Ogden to dispose of the said lands for them, and to execute a release and acquittance therefor: that Robert Darnall and Sarah his wife, Henry Steele and Anne his wife, and John Henry and Dorothy his wife, (which said Sarah, Anne, and Dorothy were the co-heiresses of col. John Rider deceased) had by their petition set forth that certain tracts of land therein mentioned by the names of the Reserve, Handsell, and Bartholemew's close, lied within the boundaries of the tract granted to the said indians by the act of 1704 so long as they should occupy and live upon the same: that the said three tracts had become by purchase and devise the right of the said col. John Rider, and that the reversion was then in the petitioners, who therefore prayed that, as the said lands had theretefore been taken from their ancestors for the public account, the public money might (now) be applied to purchase a release of the indian claim to the same, for their use: that the said Amos Ogden had, in behalf the said indians, offered to take the sum of six hundred and sixty-six dollars and two thirds of a dollar for a release of right and full acquittal of claim of the said Nanticoke indians, as well to the aforesaid three tracts of land as to the three thousand acres lying on Broad Creek in Somerset county, granted them by the act of 1711 so long as they should occupy the same, which said three thousand acres having been paid for by the public were, when the said indians should cease to occupy them, to be disposed of as the general assembly should direct and appoint.

The prayer of this petition appearing reasonable, it was enacted that the aforesaid sum should be paid to the said Amos Ogden in full satisfaction for the claim of the Nanticoke indians to the beforementioned lands, and his receipt taken therefor, and that such payment should to all intents and purposes vest the aforesaid petitioners Robert Darnall and Sarah his wife, &c. with the same right of entry in, and claim to, the said three tracts of land, called the Reserve, Handsell, and Bartholomew's close, as if the said indians had totally deserted and quitted claim to the same. In regard to the three thousand acres of land on Broad Creek three commissioners, named in the act, were appointed to make sale thereof, by way of vendue, to execute conveyances, and to deliver over the bonds or money received on the said sale to the treasurer of the eastern shore, for the use of the province, after which they were to be fully discharged of their trust, and no longer answerable therefor.

Thus far go the laws of the former government on this subject. The proceedings which actually took place under those laws, the degree in which the Indian titles were extinguished, and the grounds upon which they were considered by the state goverment to be still in some measure subsisting, are matters of which I am not very accurately informed, and which, indeed, I have not taken much pains to investigate, believing that it would scarcely be proper at this time to discuss, in a critical manner, the history and actual state of those titles, since they are understood to have given rise to suits, now depending; some of them, as I am informed, very recently instituted in the courts of the United States. I shall therefore merely proceed to notice the provisions of the acts, of the state legislature of Maryland relative to the indian lands. The first notice which I observe to have been taken of them was by the act of (*b*) 1785, ch. 88, in which the governor and council were authorised to appoint "some fit and proper person to "treat with the indians entitled, under any act of assembly, "to any lands in Dorchester County, for the purchasing the "said lands, or any part thereof," on behalf of the state, and to agree with them, on the terms of the said purchase, for a certain annual sum to be paid to the said indians as long as any of them should remain: to take a deed to the state expressing the conditions; the said deed to be acknowledged before the general court of the Eastern Shore or the court of Dorchester county, in open court, and the same person after the purchase so made was to sell the said lands at auction, on terms, and after a notice, prescribed by the act.

It does not appear that any thing was effected under this act, or under one of 1790 ch. 43, appointing commissioners to dispose of the indian lands in Dorchester county, which was repealed by an act of 1798, ch. 82. I shall therefore pass to the provisions of the last mentioned act, by which five commissioners were appointed and authorised to repair to the indian settlement near Secretary's creek, in Dorchester county, and to contract, covenant, and agree in behalf of the state, with the Choptank indians inhabiting the said settlement, for the purchase of their lands; the act provided that, by the said contract those lands should be forever thereafter vested and confirmed in the state, in consideration whereof there should be reserved to the said indians, for their own cultivation and improvement, a quantity of the said land not exceeding one hundred acres, to be so laid off by the commissioners as to include the actual settlement of the indians, and a suitable pro-

(*b*) It will be seen presently that sales were made of the Nanticoke Indian lands before this time by the intendant of the revenue, but I cannot speak here of the particular authority under which they took place, having, rather unaccountably, failed to discover it.

portion of the wood land; which said quantity, so reserved, should be held, used, and occupied by the said indians so long as they, or any of them, or their descendants, should continue to inhabit the said settlement: and the said commissioners were further authorised to covenant that there should be allowed and paid to each individual of the said indians who then claimed title to, and received rent from the said lands, such annuity as might be agreed upon, provided that the aggregate amount of such annuities should not exceed the sum of six hundred dollars: that the said annuities should commence on the first of January ensuing the date of the agreement, and that the annuity allowed as aforesaid to any indian should, upon his death, descend and be continued to such person or persons as under the laws of the state would be entitled to have the personal estate of such indian in case of his dying intestate and leaving personal estate, and be transmitted in the same manner, provided that no annuity should be transmitted to any but the immediate descendants of the Indian to whom it was granted, and that upon failure of such descendants the annuity should cease. The provisions concerning the execution, acknowledgement and recording of this agreement it is not thought material to mention.

The commissioners, after the completion and execution of the said contract, where to cause the lands to be surveyed: they were also to have the quantity to be reserved as aforesaid for the indians laid off, and distinctly marked and bounded. The remainder was then to be laid off in lots of not less than one hundred nor more than five hundred acres, unless by the interference of creeks, branches, roads, or angles, it became necessary to deviate in some degree from that rule; the lots to be numbered, marked, and bounded; and a complete plot and certificate to be prepared, and lodged with the clerk of the county to be filed and retained for safe custody.

The agent of the state, after receiving the proceedings of the commissioners, which, with a duplicate of the plot and certificate of the survey, were to be transmitted to him, and after a notice, and upon terms, prescribed in the act, was authorised to proceed, in his discretion, to dispose of the lots by public sale.

The indians were to be debarred from the privilege of selling, leasing, granting, or in any manner disposing of the land to be reserved to them as aforesaid, or any part thereof and a penalty was affixed to any attempt to purchase or lease from them contrary to the act; and, if no contract should be effected in virtue of this act, before the first of August then ensuing, the agent was authorised in his descretion, to prosecute a suit or suits at law or equity, as the case might require, to

recover the possession of the said land, or any part thereof to which the state might be entitled.

In pursuance of this act a contract was effected with the remnant of the Choptank indians, being only four individuals, who had a claim to, and continued to inhabit, those lands; of which contract, duly executed and acknowledged on the 6th day of April 1799, the following were the conditions. For two of those indians, Mary Mulberry and her son Henry Mulberry, the quantity of ten acres of cleared land was to be laid off where their houses then stood, "so as to include the same or any other house to them then belonging, and also ten acres of wood-land for the use of the same:"—for Henry Sixpence ten acres of cleared land, including his tenement, and ten acres of woodland;—and for Thomas Joshua the like quantity of cleared land was to be laid off so as to include his tenement, and ten acres of woodland as before: which lands, so laid off, were to be held, used, and occupied by the said indians so long as they and their descendants should continue to inhabit the same and to use it for their own cultivation and improvement: and the following annuities were to be paid, in quarterly payments, to the said indians respectively, and their descendants, upon the precise terms mentioned in the act, and to cease upon failure of such immediate descendants as therein described, viz. to Mary Mulberry and her son one hundred and sixty dollars, to Henry Sixpence one hundred dollars, to Thomas Joshua one hundred and sixty dollars, and to Esther Henry, a person not a party to the contract, and, it is supposed, not upon a footing with the others in point of title, thirty dollars: some of which annuities are still received by those indians, or their descendants. On these considerations the indians beforementioned conveyed to the state of Maryland "all the lands, tenements, and appurtenances" which they held and possessed "commonly known by the name of the Choptank indian lands" in Dorchester county, "agreeable to the metes and bounds of the said lands supposed to contain about four thousand acres more or less: it only remains to be observed that these lands were afterwards sold by the agent agreeably to the directions of the act. As to the lands of the Nanticoke indians, concerning which I have mentioned, upon mere casual information, that disputes are now subsisting, sales were made of those lands, prior to the act of 1785, by the intendant of the revenue, I presume under his general powers, which imbraced all the concerns of the state in money or property, but possibly under some particular authority which has escaped my research. These sales gave rise to sundry resolutions of the general assembly, releasing purchasers from their contracts, directing suit against the claimants under the proceeding of

1768, beforementioned, &c; which will hereafter be noticed. It follows from this that the proceedings of the state in respect to indian lands did not originate in the acts which had been mentioned, but they were noticed, of necessity, as the first in which I had found express provisions on that subject.

CHAPTER VII.

OF PROCLAMATION WARRANTS.

FROM the general plan adopted in this investigation, namely, that of separating and classing the provisions of the acts of assembly so far as different subjects or heads of enquiry present themselves, it might be expected that those provisions or regulations which regard the manner of taking up vacant land, cultivated or otherwise, by original warrants, and those which relate to resurveys, would be made distinct subjects of examination; but, the former have all been more or less noticed in the preceding chapters, and concerning resurveys, notwithstanding their importance, the state laws contain very few express regulations, and those which, in directing the proceedings in respect to boundaries, surplus land, &c. have a necessary connection with the subject of resurveys, have also been already exhibited. Not to multiply therefore, unnecessarily, the repetions which this mode of enquiry renders unavoidable, I shall not enter into a particular analysis of the laws in reference to those two articles, but shall reserve what remains to be said concerning them for a part of my general and final observations on the practice of the office. In the mean time, there are two other subjects which have hitherto been, but partially brought into view, namely that of proclamation warrants, and that of escheats. These require to be distinctly noticed, and to the former I shall here devote a short chapter.

The origin of proclamation warrants has been fully stated in the preceding book, and I have there observed that warrants of the same denomination, but differing in some of their properties, had continued to be in use under the state government. The difference, which will presently be noticed, was at first not in the form, or the effect, of the warrants, but consisted in the circumstances under which they were to be issued. They were introduced, or rather recognized, by that part of the act of 1781, ch. 20, which authorised the registers

of the land office to issue warrants for the resurveying, *proclamating*, or escheating any land within any of the counties of their respective shores, meaning, without doubt, in respect to proclamating, those lands to which proclamation warrants were applicable by the known regulations of the land office under the former government, so far as those regulations were not affected either by the other provisions of this act or by the termination of the proprietary's authority, under which they had been instituted; and in what cases those warrants were applicable, under the presumed restrictions, seems to require some examination, in order that we may come in a regular way to the present design and effect of the warrants in question. Here it is that the essential difference between the former and the present warrants must be noticed. By recurrence to the proclamations of 1725, &c. it will be seen that lands became liable, under them, to be taken by secondary warrants (as they may be called for this occasion) not only because they were not paid for, but also because they were not patented. The reason of this arose out of the proprietary's right to quit rents on the lands comprehended in his grants. It is true that lands held on certificate might be made chargeable with those rents, and there are some proceedings or passages of a pretty early date affirmative of the poprietary's right to them from the time of the survey. I believe further that the rents were charged and exacted at all times, so far as was practicable, from the dates of the surveys, being paid as arrearages by those who acquired lands under proclamation warrants; but I believe also that this was not always practicable, and it was therefore an object with the proprietaries that people should take, or sue out, their patents. They did not often neglect to do this when they had paid for the land, nor do I know that land duly compounded on was even taken by a proclamation warrant: nevertheless it might be so taken for want of a patent, and in this consists one point of difference between the present and the former warrants. The present government has no interest, in the nature of rent, in the lands which its citizens take up. For purposes of taxation it has provided, by means of the annual returns, already spoken of, from the registers of the land office, for obtaining a knowledge of lands lying on certificate and ready for patent, but the state is, as to its own interest, indifferent whether a certificate be patended or not, and no certificate can be proclamated after it is compounded on. This arises from the law of 1801, which declares, indeed, that certificates when compounded on shall be patented, but prescribes no limited time for the issuing of a patent, and directs that when certificates remain uncompounded on beyond a twelvemonth from the date of the warrant, the land shall be subject

to be taken by other (meaning proclamation) warrants, but does not say that it shall be so liable for want of being patented.

The provisions saving, in the cases of indulgence therein specified, the rights already acquired under proclamation warrants, have been mentioned under other heads. I shall therefore not notice them in this place, but shall pass to the act of 1795, which, among various regulations concerning the land office, prescribes new and express rules respecting warrants of this kind, and from which they now take in some sense their origin, and in part their form. This act after suspending the issue of proclamation warrants by directing that no certificate of survey or resurvey shall be liable thereto before the first day of June then ensuing, ordains as follows :

" That in case any certificate of survey or resurvey, al-
" ready made or hereafter to be made, hath been or may be
" returned, by which vacant land may be included, and not
" compounded for agreeably to law, such survey or resurvey
" shall be liable to be affected by a proclamation warrant by
" any person who shall apply for the same ; but no proclama-
" tion warrant shall thereafter issue on any survey made or
" hereafter to be made in this state unless one tenth part of
" the land contained in the said survey is compounded upon,
" and paid to the treasurer of the western or eastern shore,
" as the case may be, before such warrant shall issue ; provi-
" ded that the person claiming the said survey or resurvey
" shall have one day after the said first day of June, or after
" the expiration of the warrant of such survey or resurvey
" made, or hereafter to be made, as aforesaid, for a procla-
" mation, to pay and compound on the same ; and no applica-
" tion shall be received by the register of the land office, for
" the western or eastern shore respectively, until after such
" day of preemption shall have expired ; provided that no-
" thing herein contained shall be taken or deemed to affect the
" right of any person who hath already applied for any pro-
" clamation warrant, if such person shall take out the
" said warrant on or before the first day of April next."

The foregoing provisions effect some material differences between the former and the present circumstances attached to those warrants, first by requiring one tenth of the composition to be paid on taking them out, whereas, before, nothing was paid until the return of the certificate ; and next, in allowing an exclusive privilege, for one day, to the owners to proclamate their own certificates ; and this last provision is the more remarkable as, under the proprietary government, no person could obtain a proclamation warrant without declaring on oath

that he did not do it for the benefit, or at the instance of the owner of the certificate. This places the business upon a principle and footing, so far as it goes, altogether new. Nevertheless, as the warrant continues to bear the former name; as its general nature is the same, being a warrant founded on a right, by survey, remaining incomplete for want of a compliance with prescribed requisites;—as it has, by its descriptive appellation, been subject to certain rules or usages of office, and as the former rules of the land office have been virtually sanctioned and confirmed by the legislature until superceded by those which may be ordained by the governor and council, I have ventured in the former part of this compilation to say that it is not, any more than those of simple survey, of resurvey, or of escheat, original in its kind; and it is for this reason that I was so particular in tracing the rise of proclamation warrants.

CHAPTER VIII.

OF ESCHEATS.

IT has been mentioned in the former book that the system of escheat had been retained by the state government, but with some change in the rule, as well as in the incidents attached to it. As all other doctrines and customs of feudal origin seem to have been dissipated by the mere principle and spirit of our revolution, without being expressly abolished, this is presumed to have been kept up only through a kind of necessity; for, under any government, property is liable for want of heirs, or claimants, in the remotest or most questionable degree, to be left without an owner. Land within the limits of a state, not owned or claimed by any individual, or body corporate, must be the general property of the state or community, and those who administer the supreme power of that state must have the right of disposing of it, without which it would become an object of scramble and force, reconcileable only to a state of nature. The legislature of Maryland had therefore a right, under any name, and in any form, to provide for exercising, or disposing of, the public right to land left without legal owners. I have already stated that land in the predicament understood by the term escheat was the first description of *public land* (as we may now call all that became vested in the state by means of the revolution and its attendant acts) on which the assembly thought fit to excercise a right of ownership; in doing this, they may be

said to have ordained an original rule, since they made no reference whatever to the ancient practice, further than by using the word escheat, to denote, according to its known import, that the land in the circumstances described should revert, or fall by *accidental* succession, to the state, and adopted a principle believed to be in some degree different from that of the English laws to determine the cases in which this should take place. The intention of these observations is to shew the real ground upon which the free government of Maryland, which permitted the proprietary's long catalogue of royal rights and seignioral privileges to fall into oblivion without a parting notice, adopted this single custom. It is because some system or method was indispensibly requisite for the disposal of lands in the predicament which has been described; and the system of escheat, being already in use, and furnished with necessary attendant rules and forms, was too convenient to be rejected on account of the name.

In regard to the principle or rule of escheat adopted by the state, to ascertain in what particulars it is new it would be necessary in the first place to speak of the English law upon that subject, so far, at least, as regards escheats for want of heirs, for, with forfeitures of any kind our present law of escheat has nothing to do. I declined in the former book to examine this matter, because I could not reconcile the practice with any settled principle whatever: I shall still decline any attempt towards a full explanation of the English law of escheat, for, it is a subject not treated in any authorities within my reach with that explicitness which might enable a (*a*) person not professionally conversant in the science of the law to state, with confidence, in what consists that failure of heirs by means of which lands become escheat. I will just observe that the rule laid down in law abridgements is that a person's lands are escheat when he dies without heirs, general or special. The general heir, or heir at law, is he who after his father or ancestor's death hath a right to, and is introduced into, all his lands, tenements, and hereditaments; and it is held that he must be of the whole blood, not a bastard, and not an alien. The special heir I shall not venture to define, further than by saying that, in a general way, he is one who does not claim, like the other, by the mere act of God, and right of blood; that the description includes the issue in

(*a*) It is proper here, to observe that I do not throughout this compilation meddle with any subject upon which I have not endeavored to obtain information by reading; and that, although I have not omitted such means as mere conversations with a few professional gentlemen might afford to connect or confirm my impressions, I write finally from those impressions such as they are, and not under the sanction of any other person's opinions consequently no other person is responsible for the correctness of any thing here advanced.

tail, who claims *per formam doni*, the heir in gavelkind, who claims by the custom so denominated, and perhaps some other customary heirs; but I have been surprised to find it no where expressly stated that the *hæres factus*, or heir by devise, comes within the description of special heirs, such as may claim and take land, to the prevention of an escheat. In plainer terms, I have not been able, so far as it depended on reading and examination, to discover whether, according to the English doctrines, and their application under the provincial government of Maryland, a devise of lands to a stranger would prevent them from escheating if he left no heirs of his blood. I would not be understood, upon the whole, to question the power of a will in this particular, but it was a point of enquiry naturally suggested by the great number of escheat warrants issued under the former government, and still more by their scarcely ever containing, in the early times, any thing relative to the person last seized having died *intestate*, which is now, *by law*, essential to the validity of such warrants, and is therefore always a part of their form. It is certainly a point which Blackstone, in his chapter of title by escheat, might have settled in a very few words; but this copious and accurate writer repeatedly states in the most unqualified manner that lands become escheat when the heritable blood of the first feudatory or purchaser is extinct, either by attainder or by want of heirs, lineal or collateral, of the whole blood, without once intimating that the escheat may be prevented by a will, and this is the more remarkable as he does not omit to state that a person illegitimate, who can have no heirs of his blood, may save his lands (of which such a person is always deemed in law the first purchaser) from becoming escheat, by devising them. Whether this silence denotes any uncertainty in the law, or that the matter was too plain and obvious to require any explanation, I shall not pretend to judge, but shall leave it as I have found it. As to the rest, it is understood that the general heir whose inheritance prevents an escheat, besides being in other respects a person capable of inheriting, must, as has before been said, be of the whole blood of the first purchaser, known or presumed, and it is in this particular that the state of Maryland adopted a new rule, by permitting a succession to an heir or relation of the half blood, as far to the second degree from the person last seized. If it were true that the English statute of wills had not been of force to prevail against the original doctrine and privileges of escheat, the state of Maryland would have admitted another new principle; since, by its second act upon the subject of escheats, though not by the first, no lands can become escheat

except upon a person's dying seized in fee, *intestate*, as well as without heirs.

Having premised so much relative to the principle of escheats, I shall proceed to the examination of our acts of assembly upon that subject, in which, although the rules determining in what cases lands shall be deemed escheat appear clear enough in point of language, their design and practical application have been considered as involved in great difficulty. By the act of October 1780, ch 51, the rule of escheat is prescribed in the following words, viz. "that all "lands within this state of which any person has.....or shall "hereafter die, seized in fee simple without any heir of the "whole blood who could have inherited if he had been a "subject of this state, or without leaving any relation of the "half blood, that is, first cousins, as the same are reckoned "by the common law, such lands shall escheat to the state" &c. I do not in this place notice the dispositions made concerning the lands so described.

The act of 1781, ch. 20, apparently in explanation of the former provison, lays down the same rule negatively by saying that "no warrant of escheat shall be good unless where "the owner hath died, or shall die, intestate, seized in fee "simple, and without having any relation of the half blood "within two degrees (that is, first cousins) as the same are "reckoned by the common law, and without leaving any re-"lation who might inherit if a subject of this or any of the "United States:" it then goes on to say "but the public do "engage to warrant and defend to the respective purchasers "their title in fee simple to any lands escheated, on payment "of a like sum of current money as was paid on the first pur-"chase by escheat, in case where two thirds of the real value "only is paid at the time of purchase, or without any addi-"tional sum being paid in case the full real value of the land "is paid in current money at the time of escheating the same, "if it should afterwards appear that there is any person who "might claim as heir to such land, or who might claim the "same under any testamentary disposition, if such person was "a subject of this or any of the United States, but whose "claim is or may be destroyed by being a British subject," by sundry sebsequent acts provision is made for the benefit of creditors; of persons having equitable titles under contracts, or having liens on property otherwise escheatable, and also for the benefit of foreigners; which will presently be noticed; but I shall first endeavour to discover the intentions of the legislature in the provisions here recited. This is a matter of no small difficulty, nor can I pretend to offer more than mere conjectures upon a subject which, I am informed, has been variously interpreted by persons the most competent to unravel it.

In regard to the import of the language, so far as extends to the specification of cases in which lands shall or shall not be deemed absolutely escheat, the two provisions certainly concur in saying that, if a person dying seized of lands in Maryland leaves an heir or relation near enough in blood to inherit, according to the received law of descents, and who is prevented from the succession only by his being politically incapable of holding lands in the state, the right under an escheat warrant shall not be conclusive; and, that if the person dying leaves neither an heir, as near as the second degree of half blood politically capable of inheriting, nor an heir barred as aforesaid, but otherwise entitled at law to the inheritance, the escheat *shall* be good and absolute, but, in the first case, a conditional right is allowed to be acquired, which the state engages to make an absolute and effectual one upon the performance of the condition stipulated, for such it will presently be seen, was the meaning of the warranty, and not the repayment of money to the parties who had acquired the contingent right.

This being the apparent meaning of those two acts, it becomes a point of enquiry what was the consideration, view, or motive of the legislature in thus suspending a title by escheat where there was nothing to operate against it but the *existence* of a claim absolutely void, that is to say, the claim of a person who might in other circumstances have been an heir, but who was actually incapable of inheriting; for by the law of England an alien cannot inherit land, and although British subjects were not aliens in Maryland before the revolution, they assuredly became such by the declaration of independence. Was there any doubt of this fact? Was it a doubt concerning the issue of the war or the terms of a peace, that prompted this reference to heirs barred only by their actual position in respect to this country, or was it supposed that there might be cases in which it would be proper to make some compensation to the heirs thus deprived of their right of succession? Whatever was the particular consideration that led to this provision, the intended effect of it was to obtain a greater price for the land that might eventually be found to belong to the state *only* because the heirs were British subjects than for such as was escheat for want of heirs either in America or elsewhere, or, in other words, such as would have been escheat independent of the revolution; for, the latter was to be conclusively disposed of for two thirds of its real value; whereas, to obtain a secure title to the other, the party purchasing by escheat, that is, taking a warrant, returning a certificate of survey, and paying the two thirds of the value, was obliged to pay as much more, unless he had waved the general privilege of obtaining a patent on paying the said two thirds, and, to avowed further question, had on the return of his certcifiate, paid the full

valuation of the land. That the legislature, in warranting the title of purchasers on those terms, meant to secure them in the possession of the lands, and not by any means, to restore the lands to the British claimant, and refund the money paid by those purchasers, is plain from the substance of the warranty; for in the case of a man's having paid the two thirds, and finding afterwards that there existed a British heir, by means of which his title would not be good without paying two thirds again, it would be absurd to suppose that on making this second payment he was only to have his former one restored, and to have no land; and equally so if on paying this second sum he was to have the whole refunded. The state therefore meant on compliance in either way, with the terms beforementioned, to perfect the title of the purchasers by escheat, by releasing its own right to the lands; for if the escheat warrant was not good, and the British heir could not hold the land, the right must have been in the state by confiscation, or by escheat, which last title so far as it was withheld provisionally from the takers of warrants, was reserved to the state itself, or the whole I must suppose, from the structure of these provisions, that there was some difficulty felt, and some inconvenience apprehended, in escheating lands of which the heirs had so newly acquired the charter of aliens, and that as an indemnification for such inconvenience, the state resolved, if it did pass and guarrantee a title, to have (contrary to the rule in other escheats) at least the full value of the land, and even a third more unless the parties, by way of precaution, paid the full value at once. This last provision seems at the first view inequitable, and indeed absurd, but may be thus explained. A merit has generally been attached to discoveries of escheat land, because it is so much absolutely gained which would have been lost to the state, if some person had not ascertained, and given information, that the land was escheatable: this is sometimes attended with trouble, and no person, in a general way, would take that trouble, and incur the ill will of those who are interested against the escheat, without some prospect of advantage. On this ground one third of the value of the property was given, for many years, by the provincial government, and is now given by the state, to discoverers, being abated in the purchase of the land: but, in the cases of which we have just been speaking, no such merit was perhaps admitted, as the discoverers would not have ascertained that there was no heir in existence capable under the common law of inheriting, but only that there was no heir in the United States. However, not to distinguish between one discoverer and another at the time of taking a warrant, for they all, in fact, suggest the same thing, to wit, that the owner of the land died seized in fee, intestate, and without heirs,

the matter stands thus: land escheatable to the state without becoming so, in any degree, by means of the declaration of independence, or the confiscation act, the assembly was willing should be purchased, or taken, for two thirds of the estimated value: for lands not escheatable without the aid of personal disabilities, attaching through those acts upon individuals who would otherwise have been entitled to inherit, they thought proper on the contrary, to exact the full value: any person, conceiving land to be escheatable, might take a warrant on the usual suggestion. I will say nothing of a warrant taken under the first of the before recited provisions alone, where a British heir was afterwards discovered; nor of warrants taken between the declaration of independence and the act of 1780, as I have constantly avoided raising questions about the validity of past proceedings; but, under the joint provisions of 1780 and 1781, any person, on taking a warrant, might make his own calculation of the probability of its ever appearing that there was an heir, barred only being a British subject. If he was satisfied that there was none, he, of course, paid but two thirds of the valuation of the lands and improvements on the return of his certificate: If he knew, or strongly believed, that there was an heir so barred, he would be apt to pay the full value at once, in order that he might not, upon the proof of such an heir, have to pay an additional two thirds, making altogether one third more than the whole value: if it was a matter of doubt only, he made his election as in an affair of chance: if he was disposed to risk, he paid two thirds, and took his patent; the consequence of which was that, if the existence of an heir, barred as aforesaid, should never be made appear, he obtained the land for one third less, and if the contrary happened, he paid one third more, than the real value: and this is what I mean by the states exacting the whole value for escheats of this kind, as, an even chance for more or less was calculated to result, taking one case with another, in the full value. As to those who in a doubtful case prefered security to hazard, they would pay the full value at once. This is my solution of these two provisions, and so far as concerns the existence of British or alien heirs, where there are none in the United States, I do not perceive but that they are still in operation; but in respect to the limitation to heirs of the half blood in the second degree those provisons are virtually abrogated by our act of descents, passed at the session of 1786 (ch. 45) which has narrowed the law of escheat in proportion as it has widened that of heritable descent, and to that act the reader may, in a negative sense, be refered for the actual law of escheat, which is now stripped of its feudal doctrines and appendages, and only comes in, of necessity, when no heir is found, or at least makes a claim, within the

limits of the act abovementioned. I shall now return to the acts relating expressly to the subject of escheat, in order to notice as briefly as I can the provisions not yet examined.

The power given by the act of 1780, ch. 51, to the commissioners of confiscated property in respect to escheat lands were temporary, and have already been sufficiently noticed: the mode of payment prescribed in that act was also a temporary provision, being permitted to be in money, bills of credit, or crop tobacco, payable within certain terms therein specified. The commissioners, it will be recollected, were authorised to direct warrants to be issued from the land office to the discoverers of escheat lands, giving a preference to those who had already applied at the said office for the preemption, and to subsequent discoverers according to the order of their applications. The principle however was established by this act, though modified afterwards, as has been mentioned, by that of 1801, of receiving for escheats two thirds of the value thereof, which it was directed should be returned with a specification of the quality of the land, by the surveyors, and revised and adjusted by the aforesaid commissioners. Upon default of payment the land was to be subject to new applications.

By the act of 1781, ch. 20, besides the repeal of the aforesaid power of the commissioners, and the general authority given to the registers of the land office to grant warrants for the resurveying, proclamating, or *escheating* lands within the counties of their respective shores, it was ordained that the purchase money on all escheats should be paid within one year from the date of the warrant, after which, warrants might be issued to new applicants. What concerns the preference to be given to applicants, in proper hours for the transaction of business, has been already noticed, and although placed in the section which regulates escheats, has relation to warrants in general. The only remaining matter relating to this subject which is found in the act under consideration is a direction that the value in current money of all escheat lands and improvements thereon shall be returned and certified by the surveyor on oath at the time of returning his certificate of survey, and that the treasurer shall finally ascertain the value thereof and receive the money from the party. The same provision is made in respect to the Eastern shore by the act of 1795, ch. 61.

It has been mentioned that provision was made for the benefit of the creditors of persons whose lands had or might become escheat; likewise in behalf of those who might have claims by lien or contract, on the estates of such persons; and also for the benefit of certain foreigners. I shall notice

these in their order, and then close this chapter of escheat. By the act of 1785, ch. 78, it was provided that where any person died seized of lands &c. intestate and without heirs of the whole or half blood, *indebted*, and not leaving sufficient personal estate to pay his debts, any of his creditors might file a petition in the chancery court, suggesting such facts, and praying that such real estate, or so much thereof as was necessary, might be sold for the payment of the debts of the deceased, to which petition the attorney general was to appear on the part of the state, and the chancellor, being satisfied of the facts might order a sale of the whole, or part, as might be necessary, and if the whole was not sufficient, might direct a division between the creditors in proportion to the amount of their claims. Upon a certificate of survey being returned on an escheat warrant any creditor might enter a caveat thereto, and no patent was to issue until the matter had been examined by the chancellor, and the creditors proving their debts to his satisfaction had been paid by sale of the property, as before directed. In case of a person's dying intestate, and without heirs, as aforesaid, after having contracted in writing for the sale of any of his real estate, the person claiming a right of conveyance might file his petition in manner aforesaid, to which the attorney general was to appear, and the chancellor, being satisfied that the party had a just claim to a conveyance, might decree that the attorney general should execute a conveyance accordingly, upon such terms and conditions as he the chancellor, should think proper; the consideration money, if any due, to be paid, before conveyance, to the treasurer of the Western shore, to be applied in the first place to discharge the debts due from the deceased, and the balance to the use of the state. It was further provided that in case of a creditor's being out of the state, so as not to have notice of the death of the intestate in time to enter a caveat, and the real estate in consequence escheated, the state would, upon application of such creditor, pay, to the amount which it had received on the escheat, in discharge of such creditor's claims, the same being first proved to the satisfaction of the chancellor. The act containing these provisions is still in force, having after some continuances, been made permanent by act of 1804 ch. 108.

The act of 1794, ch. 60, pursuing the subject of debts, ordains that where lands shall have been patented under escheat warrants, the creditors, provided that they are citizens of the state of Maryland, or that their claims were contracted within the same, may file their bill in chancery against the state, in which it shall be sufficient to state the nature of their claims as if the suit was brought against the original debtor, and upon serving subpœna on the attorney general, and estab-

lishing their claims in the usual mode in that court, shall be entitled to recover the amount, if the money received by the state shall have been equal thereto, or, otherwise, so much as has been so received: and the chancellor is in such cases directed, by notice, in such form as he shall think proper, to call upon the creditors to produce and substantiate their claims, and if there are several creditors who either bring suit, or establish their claims upon the notice aforesaid, and the money received is not sufficient to satisfy the whole, the chancellor is to apportion the sum received between them, in proportion to the amount of their several claims.

By the act of 1799, ch. 79, it is provided that any person having a claim, or a title in equity, to, or a lien or charge upon, land which has been escheated, or has become the property of the state by confiscation, or by having been purchased by an alien, may bring a suit against the state in any court of law or equity in the same manner as it might have been brought against the person from whom the land devolved on the state; and that if such suit be brought in the chancery court, the attorney general shall be the defendant in behalf of the state, and the same proceedings had thereon as if the defendant were the person from whom the title had devolved on the state, provided that the state shall be burthened with no costs occasioned by the said suit, or the title so derived.

By the act of 1789, ch. 14, the state relinquished its right of escheat to lands acquired subsequent to the naturalization act of 1779, by foreigners who had neglected to take the oath of allegiance prescribed by that act, provided that such foreigners should naturalize themselves, in the form required, before the first of June then ensuing, and, on the same condition, it confirmed the rights of persons who had purchased from those foreigners, saving however all rights already derived under warrants of escheat. This act declared further that no applications (it is supposed, for escheat warrants) should be admitted or received to the prejudice of such foreigners within the time so limited. The period for perfecting their naturalization was afterwards, by act of 1793, ch. 26, extended to the first of August 1794.

By an act of 1800, ch. 70, upon a suggestion that, under the existing regulations for the conduct of surveyors, difficulties had occurred in the execution of warrants of escheat, it is directed that where such warrants are for the surveying of land held in tenancy in common, and the part only of one or more of the tenants in common has become liable to escheat, the surveyor shall cause the whole of the land to be surveyed, and a certificate thereof returned into the land office, specifying the value of the whole tract and its improvements, and that after examination of the said certificate, and payment made

of two thirds of the valuation of the escheatable part of the land, a patent shall issue, in due time, to the party in whose name the certificate may be returned, or to his heirs, or assigns, for the undivided portion of the land that may be liable to escheat as aforesaid.

CHAPTER IX.

POWERS OF THE JUDGES OF THE LAND OFFICE; WITH SOME NOTICE OF THE PRINCIPLES OF DECISION, AND RULES OF EVIDENCE; AND A COLLECTION OF CASES ADJUDGED, ON CAVEAT, AND ON APPEAL:

THE foregoing chapters have stated, in general, what the laws of Maryland prescribe in relation to land affairs; and, if things were always done in conformity with those rules and directions, the practice of the land office would require but little further explanation: but, besides that the proceedings in this office are, in common with all others creating or transferring titles in landed property, subject to error, and to failure, for want of a requisite conformity and adaptation between the thing intended and the method taken to effect it, the land office system is such a compound of law and usage, and the distinctions resting upon the latter, or upon mere reason and equity, which must govern where neither law or precedent is found, are so nice, and so difficult to reduce to principles of general application, that those proceedings may be said to be peculiarly liable to the production of errors in those who mean fairly, and unfair views and contrivances in others, equally giving rise to conflicting claims or pretensions, which, as the object in contest is, always land to which neither party is admitted to have obtained a title, cannot be tried and determined in the courts of law. It was for this reason, and for greater promptitude of proceeding, that there was generally a special judge or judges for the land office, possessing authority to adjust matters of preference and right between parties aiming at the acquisition of the same land, and to hear and determine all contests relative to the final question of passing a title by patent, after which, their jurisdiction and authority were understood to cease, since the title so passed was a matter for the cognizance of a court of law, or of equity, in their usual modes of proceeding in suits or questions of title. In regard to the general principle of decision in the land office, I have

stated in the former book, and, indeed, shewn by the forms of commissions, that the judges were to decide all questions coming before them *according to right reason and good conscience*, having regard, at the same time, to the instructions of the proprietary, which, in matters regarding the land office, were considered at least by his officers, equivalent to laws. The late chancellor, Mr. Hanson, a number of whose decrees will presently be exhibited, seems however, not to have been aware that the state legislature, in directing that trials in the land office should be conducted on chancery principles, adopted no new rule. It is true that this direction was not expressly given until the year 1789 ; but it is seen that questions were determined under the former government on principles of general equity, though subjected, in their application, to a conformity with positive ordinances. In like manner, the principles of equity which now govern those decisions cannot be so applied as to overbear positive laws, and it is only the general and acknowledged principles of chancery proceedings, and not the accidental powers of the chancellor, which are permitted to be applied in contests in the land office. The meaning of this distinction is that no special authorities given to the chancellor, *as such*, by acts of assembly, enlarge his power, or alter his rules of proceeding, as judge of the land office. The matter rests then substantially upon its ancient footing. The equitable right, or incipient title, acquired under warrants and certificates of survey, which are the subjects of contest in the land office, is tried and determined on principles of equity, subject, as I presume they are also in *courts* of equitable jurisdiction, to the controul of the law, and it could, I believe, be determined on no other.

Having said thus much relative to the general principle of decision in the land office, which, on account of the kind of judicial power therein exercised, has been sometimes deemed, as has been before hinted, to partake of the nature of a court of record, I shall proceed to notice the provisions of our acts of assembly on that subject. The chancellor was, *in effect*, created judge of the land office by the act of 1781, ch. 20, which provided that *if any dispute should arise concerning the validity of surveys, or the grant of lands*, the same should be heard and determined by the CHANCELLOR, *as to all warrants or surveys theretofore granted or made, agreeable to the former rules of the land office;* and, *as to all warrants and surveys thereafter to be issued or executed, according to such rules and orders as should be established by the governor and council*, who, by the same act, were empowered *to make and establish rules and orders* for the government of the office, by instructions to the treasurers in regard to the issuing of titlings for warrants,

and to the examiner, registers, and surveyers, relative to every part of their duties.

The former rules of the land office were, then, expressly made applicable to matters taking their commencement under the proprietary government, and prior to the passing of this act,—in exclusion of any new rules which might be adopted for the future government of the office; but, there arises, here, a question whether those old rules were to continue to be applied, also, to new business, until they should be superceded by other regulations. This question is raised by the chancellor in the case of Wilcoxon *vs.* Edmundson: He admits that no new rule, applicable to the point in issue, has been prescribed by the governor and council, and then proposes a query whether the former rule of the office or the "dictate of equity," as sanctioned by the act of 1789, is to govern; but he does not determine the question thus stated, because the result, he observes, must be the same in either way. The question however is not difficult. The law of the land office necessarily consists, in part, of usage or custom: An usage capable of a precise application becomes erected into a rule: those which regard matters possessing too many shades of difference to be comprehended under a single description continue to bear the name of usages, and the points to which they are applied must be determined by precedent, or by analogy. The rule of equity was not intended to supplant the known rules of the office; for, the chancellor, who applies this in his decisions, was not authorised to prescribe new rules, that power being left with the executive, and consequently he cannot abrogate the old ones. This last position, I think, is undeniable, and the conclusion from it is that, so far as the governor and council have not ordained new rules, the former ones are in force. In short there is, notwithstanding that the contrary has sometimes been advanced, *a* LAW *of the land office*, composed first of the acts of assembly; which, so far as they go, nothing can controul; then, of known rules of office, either expressly prescribed or confirmed, or tacitly sanctioned, by the governor and council; and lastly, of usages not reducible, or at least not reduced, to the form of definite rules, which are also sanctioned in a tacit manner by the governor and council, in their not having exercised the power which they possess of superceding, by express regulations, both rules and usages,—in a word, every thing but the law itself: and, to this law of the land office the principle of equity is applied, in the decision of contests, in the same manner, and no other, as the same principle is applied in the chancery court to the law of the land. I proceed to notice the further provisions of the acts of assembly that the reader may judge for himself; and, in the first place, that which regards

the general power of the chancellor, though it is not the first in course.

The act of 1789, ch. 35, ordains as follows—viz. "That "in all disputes which may hereafter arise before the chan- "cellor, as judge of the land office, he shall have full power "and authority to decree thereon according to equity and "good conscience, and agreeably to the principles established "in the high court of chancery, as if the matter were brought "before him by a bill in chancery."

From the language of this section it may, perhaps, be thought that I have gone too far in supposing that nothing new has been introduced relative to the principles of decision in the land office; and it might seem presumptuous in me to attempt to judge of the effect of the latter part of the provision, unacquainted as I am with what a chancellor may or may not do in a matter brought before him by a bill in chancery. It is not improbable, besides, that the late chancellor, who was appointed in the year 1789, may have been concerned in drafting this law, and if so, he must have been well informed concerning its intention, and the occasion that existed for such a provision; but, although the section forms but a single sentence, it embraces two distinct considerations, namely, *principle* and *form*. As to principle, I still think that nothing substantially new was introduced; for, "equity and good "conscience" can mean nothing very different from "right "reason and good conscience," which formed the rule of action of the former judges of the land office; but in regard to special authorities, and forms of proceeding, I suppose that something new was introduced by this law, and yet not much; for when it is recollected that the person who by the act of 1781 was to decide contests in the land office was the *chancellor*, an officer already clothed with authority to decide, on principles of equity, upon every dispute that came before him in that character, and that no new principle was then ordained further than concerned a distinction between old and new cases, it must be admitted that this law can have done little more than to make those principles special and positive which before were incidental and implied: and, to prove that the sphere of authority, as to matter or substance, was not enlarged, the chancellor does not vacate a patent under the general provisions of the law of 1789 although he does it on a bill or complaint in chancery, and is also authorised by that act to vacate a patent in a case therein described, as judge of the land office. I have no design in labouring this point but to set the principles of decision in the land office in a clear and full light. The reason for my saying so much upon the subject will be found in the adjudications of the late chancellor, who seldom decided a case of importance without some

reference to the nature of his powers, and sometimes spoke doubtfully, or by way of hypothesis, concerning them. I do not pretend to decide where the chancellor doubted; but, as an officer concerned in the land office establishment I have endeavored to form correct opinions on every thing relating to it, and in this attempt to inform the public, I must state my impressions explicitly, or I should do nothing.

Of the provisions conferring particular powers on the chancellor some have been already noticed, and those which regard the judge of the Eastern shore land office have also been spoken of in preceeding chapters. But there remain several important provisions which require to be here mentioned.

In the act of 1784, ch. 75, which authorised the issuing of grants of land westward of Fort Cumberland under warrants obtained between the twenty-second of March and the sixth of October 1774, great care was taken that those grants should be issued to no persons who were not bona fide citizens of the United States at the passage of the act opening the land office, or who had not then paid the caution money for the lands, and also for annulling grants which had been or should be obtained by persons not citizens, &c. to effect which objects, after a declaration that the last mentioned grants should be void, it was provided as follows, viz. "and "the chancellor may offer to the person applying for a grant "to be examined upon oath or interrogatories touching the "matters aforesaid, and to examine witnesses respecting the "same, in order that it may be discovered, in a summary man-"ner, whether the certificate was at the time of passing the "above recited act, *bona fide* the property of a citizen of this "or some of the United States, and the consideration was "paid as aforesaid: and if the party shall refuse to be exa-"mined upon oath or interrogatories, and to have the matter "enquired into in a summary manner, then the chancellor "may note the same, and give information thereof to the at-"torney general, who shall file a bill in chancery against such "person for the discovery of the truth of the facts by the "regular course of the proceeding in the chancery court; "and if it shall appear to the chancellor, either upon exami-"nation in a summary way aforesaid, or upon a bill being "filed as aforesaid, that the certificate upon which patent "shall be applied for was not *bona fide* the property of some "citizen of this or some of the United States at the time of "passing the above recited act, or that the consideration was "not paid as aforesaid, in every such case the chancellor shall "not order grant to be issued on such certificates, but declare "the same void and of none effect; and the register of the "land office shall endorse the chancellor's determination on "the certificate, and shall make a note thereof in the margin

" of the record wherein the warrant upon which such cer-
" tificate was made hath been recorded."

It will be recollected that the aforesaid act provided that such persons as were in other respects entitled under the warrants before mentioned should obtain patents if their warrants had not been exceeded more than one fourth, and that by a supplementary act of 1785, ch. 67, a conditional provision was made for those cases in which the warrants had been exceeded more than one fourth. By this the chancellor was authorised to determine, by reference at once to *equity and justice* and to *the former practice of the land office*, those cases in which the warrants had or had not been improperly exceeded, and to order patents, or declare the certificates void, accordingly. The provision has been recited in a former chapter; the practice to which it directed the chancellor's enquiry was that of the examiner in passing certificates containing more land than was expressed in the warrants, and that of the judges of the office in issuing grants on those certificates. It is not material in this place to enquire whether the chancellor ever discovered and applied the former practice in this particular. The matter is noticed only to illustrate the intention which I attribute to the legislature relative to the principle on which questions in the land office should be decided, that is by the law and usage of the office, aided, where necessary, by the general rules of equity.

The case in which the chancellor is authorised to vacate a patent as judge of the land office is that of a county surveyor, or his deputy, taking up land, while he acts as such, contrary to the circumstances in which he is expressly allowed so to do, which circumstances have been heretofore stated: the act of 1789, ch. 35, provides that where a patent shall have issued to any person acting under a secret trust for any such surveyor or deputy, it shall be liable to be vacated, upon a petition made within two years from the date thereof to the chancellor, as judge of the land office, and that there shall be the same proceedings on such petition as upon caveats to certificates. The legislature is undoubtedly competent to ordain that a patent shall be vacated in any manner they think proper, and this case was supposed to call for a prompt remedy, but it does not enlarge the general power in respect to the vacation of patents.

The 12th and 13th sections of the act of 1781, ch. 20, which have been inserted under the head of general regulations, need not be here repeated, but they deserve particular attention in considering the powers of the judges of the land office. It will be seen by the decrees presently to be exhibited that, although the chancellor was by these sections empower-

ed and instructed to decide on location, it has not been deemed obligatory on him to do so in every case, but that he has been supposed at liberty, where constructions of law, and doubts as to fact, might arise, to refer questions of location to a court of law. This practice has been recognized and established in a variety of cases, in some of which the reasons for it are amply set forth. It has been considered that the chancellor, by admitting a caveat on the ground of the land's being included in a former patent, would not only undertake to decide that the course and termination of particular lines were clearly as contended by the caveator, but would put it out of the defendant's power to have the matter tried by a jury under the direction of a court of law: It has also been deemed, by the successive chancellors, improper to decide on a point of law which might afterwards, in any way, come before the judges of law, or to decide on a strongly contested and important fact;—on the ground that, on an ejectment being brought against the caveator by the person caveated, when the latter had obtained his patent, there would be matter proper for the consideration of both judges and jury, and that, if the result should be favourable to the caveator the patent would be of no avail. Another consideration has been the difficulty which the chancellor (supposing him the proper and sole judge of location) would find in deciding as to the running of particular tracts; and inasmuch as it appeared that the admission of a caveat would put an end to the dispute, without appeal, leaving the defendant no foundation for his title in an ejectment, and that the dismissal of a caveat, and allowing a patent, would put the parties in a condition to have the title tried by the proper and established tribunals, it seems to have been the general rule that, unless the caveator, who alledges that the land is contained in his grant, can support his allegation beyond a reasonable doubt, the matter shall be referred to a decision at law. If the chancellor was however clearly of opinion in favour of the caveator, he admitted the caveat notwithstanding all these considerations; but where the pretensions of a caveator rested on the ground aforesaid, of land originally included in his grant having been thrown out by the variation of the compass, the late chancellor has constantly refused to admit the plea without it was supported by some proof of the original runnings. This rule, and his reasons for it, are laid down in several adjudications, in which he observes that the legislature has established no principle relative to allowance for variation, or whereby to ascertain the original runnings in all cases; that it does not appear whether the chancellor is to fix the ratio in the land office; that although it be true that there is a continual variation changing the lines of every tract every year, and although it seems rea-

sonable to make some allowance, yet, the variation being different in different places, and at different times, no general rule can be found applicable to all cases; and as an arbitrary allowance would be inconsistent with the principles of justice, it has, necessarily, been adopted as a rule to make no allowance, without proof of the original running of one or more of the lines, whereby the proper allowance for all might be ascertained. For further reasonings on this point, and on various other parts of the practice, I shall refer the reader to the decisions themselves; but something further remains to be said relative to the authority of the judges of the land office, and the methods of proceeding on caveats.

The rise, and the general nature, of caveats have been explained in the former book. They constitute a proceeding of essential use in the land office, in preventing litigious and groundless actions of ejectment in the courts of law; for, without a title, by or under a patent, such an action cannot be maintained. The judge of the land office, in admitting a caveat against a certificate founded on erroneous or fraudulent proceedings, such as would eventually be condemned in a court of law, destroys the germ of an useless litigation; for, as the late chancellor very frequently observes in his decrees, the defendant in the land office, when the caveat against him is admitted and ruled good, is without appeal and without remedy, at least as to his obtaining a patent on the certificate as it stands, although, after such corrections as shall have removed all defects recognized in the admission of the caveat, he may still obtain a patent upon the same certificate. The practice a while ago noticed of dismissing caveats where very little is wanting to establish the irregularity of the certificates, is in one point of view considerate, as it affords the only apportunity which the defendants can have of trying their right at law, where some possibility of a right is admitted to exist; but, on the other hand, lessens the utility of the institution of caveats; discourages them where perhaps they ought to be entered; and lessens also the importance of patents, in sending them into courts of law merely to be set aside. On which side lie the greatest advantages, or inconveniences, I shall not pretend to determine.

The principal directions relative to the summoning of parties &c. in trials in the land office, are contained in the act of 1782, ch. 38, which provides that subpœnas may issue from the chancery (or the general court of either shore) to summon parties to appear, or to require the attendance of witnesses to give testimony on any caveat; that every sheriff shall obey such subpœna; that attachment for contempt may go from the court issuing the subpœna against a witness for non-attendance, and that such witness may be fined as in o-

ther cases, and that the chancellor may, by rule, direct depositions to be taken, and received as evidence on the hearing of caveats, reasonable notice being given by the person taking those depositions to the other party, that he may have an opportunity of attending;—with other provisions, for the payment of witnesses &c. which have been heretofore noticed: By the act of 1797, ch. 114, the chancellor has power, as in the court of chancery, to award costs to the party prevailing on the dicision of a caveat in the land office. There are other provisions in this act relative to caveats, particularly one for the purpose of clearing the office of those caveats which were standing therein at the time of its passage. This provision must be noticed in another place for the purpose of explaining some orders of the chancellor, relative to the caveats in question, which being of a temporary nature, do not properly belong to the present chapter. As to the general rules, it is to be recollected that all caveats instituted subsequent to the passage of the act aforesaid were to remain in force and operation no longer than twelve months from the time of their entry, unless, under special circumstances, the chancellor, or the judge of the land office for the Eastern shore, should otherwise order and direct.

The only further matter which I shall touch upon, previous to introducing the decisions that are to be selected, is what concerns the rules of evidence in the land office. The principles upon which disputes in that office have been stated to be tried and determined may apply to the evidence required or admitted in the investigation; and it might therefore appear sufficient to refer to the established rules of evidence in the chancery court; but, from the peculiar nature of these cases, certain principles have arisen which it is thought proper to state on the authority of particular decisions, in which those principles are laid down and adopted.

A plot, or as it is more generally termed in the office, a *plat*, for illustration, establishing the pretensions of the caveator, ought to be retained in the office, as evidence of the ground of the adjudication; but not so as to plats exhibited by the other party; and this is founded on a maxim that the defendant succeeds of course upon his certificate, as returned, unless sufficient *affirmative evidence* be produced against it by the caveator.

A person taking out a special warrant is not allowed to prove his intention, as to location, by *parol evidence*, as, whenever such evidence is admitted to prove the intent of a *deed*, it must be the meaning of both parties that is to be enquired into, and parol evidence should not be admitted to prove that

which from the nature of the transaction ought to be apparent on the warrant itself.

A plat returned on a survey by a private person, appointed by one of the parties, without the consent of the other, is not admitted as evidence, and the depositions taken on such a survey are also to be rejected.

A paper purporting to be the field notes of the surveyor, without a table of courses, and not properly authenticated by such surveyor, has been rejected when offered as proof of the original running of land.

The expressions in a grant, it has been held, may be controuled by proof.

Absolute verity, it has also been held, does not reside either in a warrant issued from the land office, or in the record of it made by the register. If the date, description &c. contained in a warrant are alledged to have been altered, the chancellor receives evidence to establish the fact, after which it will be adjudged void, or amended, as the circumstances may require.

Where no positive proof is produced of the issuing of a patent, or the payment of composition money, the chancellor will not *presume*, from long possession, or other circumstances, (which might exist) without such a patent, or payment, that a patent did issue, and that the composition was paid. It is otherwise where the judge is satisfied by proof that a patent had issued, and had been recorded in a book which was afterwards lost.

Plats, when arbitrarily made, and not corresponding with the grant, are not to be regarded.

The proof of a deputy surveyor to a *beginning* has been allowed to be refuted, or discredited, by other testimony.

Where the former surveyor who laid down all the lands involved in a dispute, for illustration, has certified and sworn to his whole work, and produced strong circumstances to prove that the runnings were as formerly laid down, it has been deemed sufficient evidence to the chancellor.

On an appeal from the decision of the judge of the Eastern shore land office it has been stated that plats ought to accompany the transcript, but new evidence is not to be received in the hearing on such an appeal.

Evidence (not on appeal) omitted by mistake may be produced on granting a re-hearing.

On a caveat against a certificate returned under an escheat warrant, it is stated by chancellor Hanson to be the settled rule and practice that the caveator must shew a title in himself or in some other person; and, the shewing of a deed from a person, reciting that he is the heir of another therein named,

is not sufficient, without other proof of descent &c. to prevent a patent under an escheat warrant.

The foregoing principles in regard to evidence, it will be perceived, are extracted or gathered from the adjudications which follow. They are not intended to embrace all the questions that may arise upon this subject, and I might indeed have permitted those authorities to speak for themselves, without forestalling them by this partial account; but I have thought it would not be without use to collect together the most important of the maxims and declarations of the chancellor on this head. It remains to account for the selection that has been made of cases adjudged in the land office, and the manner in which they are presented. As to the selection, it will be seen that I begin with the decisions of the late chancellor. The reasons for this are that his predecessor, whose decisions and opinions, it is needless to say, must be equal in weight and value to those of any other judge known in the annals of Maryland, was not accustomed to go into any great detail of reasoning in deciding on disputes in the land office; so that his decrees were not, as I found those of chancellor Hanson, collected together in a separate file, (for those papers are not recorded) but remained, severally, with the illustrative plates, depositions, &c. belonging to the particular cases. In short, I have seen, and I believe there exist, very few decrees of chancellor Rogers which state at large the circumstances and merits of the cases, and the particular principles on which they are decided; nor is there any positive necessity for lengthy reasonings on such occasions, as the principles of the decision are generally disclosed to the parties and their counsel on the trial or examination, and no appeal being given, the decree may never again come into view, and may perhaps never be read even by the parties concerned. But this is a matter altogether in the discretion of the judge of the office, and each judge acts in it as his particular disposition leads him. The late chancellor, it will be seen, has been exact and copious in stating the grounds of his decisions, and as he frequently refers to those of his predecessor, and appears to agree with him on all points of importance, his decrees may be deemed to shew the antecedent practice, as well as that of his own time; and as they embrace perhaps the whole circle of the practice, either directly or by deduction from the principles which they disclose, I have found them, with those of still later date, some of which will also appear, sufficient for my purpose, without going back to the few that might be found of the former chancellor, who, though highly correct, was not copious in his adjudications, and would be wronged by so imperfect a selection as I could at present make of them. I cannot finish these remarks without ac-

knowledging, however, one subject of regret, namely that through those impediments which have in many other particulars rendered my performance less perfect than I could wish it, I have not executed my design of endeavoring to procure copies or abstracts of some of the decisions in the land office of the Eastern shore. The immediate cause of this omission is that I found a great difficulty in determining the manner in which this part of my compilation should be presented, that is, whether in the form which has been ultimately chosen or by reporting the substance only of the decisions. Until this was settled, an application for the necessary papers, and for the honorable judge's permission to use them in the way proposed, could not well be made; and when I came to a resolution, my matter was necessarily laid off and arranged, and there was neither time or space to make any material additions to it.

For publishing the adjudications at large, instead of abstracting them, it is I fear an impertinence to offer any apology, since whoever reads them will not want to be told that I could not have given them in a form better than their own. But to speak of the late chancellor in particular, I have satisfied myself by a careful examination of his decrees that, though they are all apparently, and I believe in reality, original drafts, they are composed in a style of correctness that will no way lessen his reputation;—and this being the case, it has appeared to me decidedly the best course to present them in his own language, since, if this volume should serve the purpose intended, of facilitating the trial of land causes, where the practice of the office may be brought into question, their authority must be infinitely more conclusive in this shape than in any form of abridgment that could have been adopted. I shall now insert the cases selected, chiefly in the order of their dates, reserving any further remarks that they may require for the concluding chapter of the book.

LAURENCE ONEALE *a* THOMAS GASSAWAY. } *Caveat in the land office; May* 4, 1790.

ON full deliberation of the circumstances in this cause, the exhibits, the arguments of counsel, the rules and practice of the land office and the acts of assembly relative thereto, the chancellor is of opinion,—

That it cannot be considered, that the late chancellor determined the main point in controversy by granting leave to correct an erroneous certificate; that, by granting such leave, he did not intend to enlarge the time limited by law for com-

pounding, and to determine that, until the certificate should be corrected, the vacant land therein comprized should not be liable to proclamation:

That although there is manifest hardship in the present case; although the chancellor is disposed, as much as he can with propriety, to discountenance all attempts to preclude a man from the fruits of his honest industry and attention, and although he is impowered to decide all disputes in the land office on the principles established in the court of chancery, he is obliged by the positive law of the land, to decide that vacant land, comprehended in any certificate whatever, must be compounded for within one year from the date of the warrant; that as, in the present case, the caveator did not compound within one year from the date of his warrant, the vacant land comprehended in his certificate was liable to be taken by the first person who applied for a warrant to affect the same, notwithstanding the leave given by the late chancellor to correct the certificate; and that the defendant Thomas Gassaway, being the person who so applied, was entitled to the warrant which issued in his favour.

It is therefore adjudged, ordered and decreed, this fourth day of May 1790, that the caveat of Lawrence Oneale be dismissed.

A. C. HANSON, *Chancellor.*

The following adjudications are to be understood as being, also, signed by chancellor Hanson, until the reader is otherwise informed.

To the honourable the judges of the general court.

BY the act of 1784, ch. 55, sec. 9, the intendant was authorised to sell the reserves in Harford county. By the twelfth section of the same act, it was directed, that the tenants on manors, and settlers on reserves, should have a preference of purchasing the parts they possessed.

A, B, and C, as settlers on the said reserves make application to the intendant claiming, their right of preemption, and offering to bond for the purchase money: D also makes application on the same ground for the same land:—

The intendant, in order to have a tribunal for ascertaining the rights of preemption, had directed a meeting of the settlers on reserves in Harford county, to elect three persons, who should determine on all disputes respecting such rights: Three persons had been chosen accordingly, and it was the practice of the intendant to make sale agreeably to their determination.—Those three persons, however, did not decide

between A B C, and D, but the intendant some time after they were chosen, and had acted in a variety of cases, agreed with D's assignee for the sale of the land in question, and took his bond, which has since been discharged: The land was surveyed, and a certificate returned into the land office, which certificate was caveated by A B and C.

On hearing of the said caveat, the late chancellor was of opinion that the said A B and C, not having purchased the land of the intendant, their case was not properly before him: He therefore directed the following opinion to be endorsed on the certificate of D's assignee. "The intendant being authorized by law to make sale of the lands in dispute; D having purchased those lands of the intendant as appears by his certificate of sale, and bounded, as the act of November 1784 directs, D is entitled to a patent, unless it shall appear that the said purchase and certificate of sale were made and obtained by fraud."

Before the said decision of the late chancellor, A B and C had applied to the agent appointed under the act of 1785, ch. 88, sec. 3, to purchase the said lands, in virtue of their supposed right of preemption, and on a supposition that the sale made by the intendant to D was void *ab initio:* The agent, by the advice of the executive, sold the said lands to them, and took their bonds for the same sum which D had bonded for: The bonds were returned to the treasurer, the interest thereon hath since been paid, and the obligors have installed.

The said A B and C, considering the dispute as not finally decided, and relying on the act of last session, ch. 35, apply to the present chancellor for a subpœna to D, to answer their caveat aforesaid; and now it is alledged by the caveators, that the purchase and certificate of sale aforesaid to D were obtained from the intendant by misrepresentation; that the right of preemption was in them; and that having purchased from the agent, and bonded, they are entitled to patents.

Qu. 1. Admitting the purchase and certificate of sale to D to have been obtained by fraud, is the judge of the land office authorized to enquire into the right of preemption?

Qu. 2. Admitting the said fraud, and the authority of the judge to enquire as aforesaid, and that the right of preemption was in A B and C, are they entitled to patents in virtue of the sale made to them by the agent? that is to say, had the agent a power of selling land, already sold by the intendant to D, before the sale of the intendant was determined to be void?

Qu. 3. As the act of 1785, ch. 66, sec. 6, subjects reserves to be taken by common warrant, admitting the sale by the intendant to be absolutely void, was the agent by the sub-

sequent act of the same session, ch. 88, sec. 3, authorized to sell reserved lands, giving a preference to settlers ? or is that preference to be given to the settlers on manors only ?

Qu. 4. Admitting that there was fraud in obtaining the said purchase, and certificate to D, and admitting that A B and C are, notwithstanding, not entitled to patents, inasmuch as there was no fraud in the *sale itself* and no imposition on the state, is the said D entitled to a patent ?

As there is no appeal from a decree in the land office ; as the dispute above stated is extremely interesting to the caveators ; as they have expressed a wish for the opinion of the general court ; and as the chancellor, on all points of law, considers himself bound by the decision of that tribunal : he takes the liberty of requesting the judges to favour him with their opinion as speedily as their engagements and convenience will admit.

On considering the above case, we are of opinion, that as the power of determining the preference allowed by the act of 1784 to settlers on the reserve was vested in the intendant only, or in persons of his appointment, and no appeal or revision is given or intimated in the act, and the intendant having fully executed his power by the sale and contract with D ; A B and C could acquire no interest by any contract with the agent afterwards.

TH : JOHNSON,
R. GOLDSBOROUGH.
J. TY : CHASE.

22 *October*, 1790.

Note.—The adjudication is not seen, but is presumed to have been conformable to the above opinion.

BASIL BROOKE
a
JOHN B. MAGRUDER. } *Caveat in the Land office.*

THE certificate and patent of a tract of land, called " Addition to Dickinson's choice," patented long ago, and now held by the caveator, has the 24th course expressed thus, " *S.* 89 *E.* 312 *ps. to the end of the* 81*st line of* " *Brooke grove*," " and then expresses several courses with certain distances, reversing as many courses and distances, or lines, of " Brooke grove"—It appears however, from a view of the certificates and plats, that the said course or line of the " Addition, &c." to reach the end of the 81st line of " Brooke grove," must run many degrees different from what is expressed, and the courses and distances afterwards expressed do not reverse any

courses of Brooke grove : It appears likewise that if the said twenty-fourth course of Addition &c. " runs to the end of the eighty-fifth line of Brooke grove, the subsequent courses exactly reverse as many courses of Brooke grove.

The defendant, Jno. B. Magruder, under an idea, that the said twenty-fourth line of " Addition," must run, according to the call, to the end of the eighty-first line, has a survey made, to affect the land which would be vacant if the said twenty-fourth line should run to the end of the eighty-first line of Brooke grove ;—His certificate is caveated by Basil Brooke, proprietor of Addition &c.

The first question then seems to be, whether Addition &c. shall run, according to the courses and distances expressed in the certificate, without any regard to the call to " Brooke grove" or whether that call must in some manner be gratified. Supposing the latter, which indeed is contended for by both parties, the question is simply, whether " Addition &c" shall run to the eighty-first line of Brooke grove, and then run the courses and distances afterwards expressed, or whether the words " to the end of the eighty-first line of Brooke grove" must be discarded, and the said twenty-fourth line run to the end of such line of " Brooke grove" as shall make the subsequent courses reverse the courses of " Brooke grove" as expressed in the certificate ; that is to say, whether the eighty-fifth shall be substituted for the eighty-first.

In the construction of all grants there are two principles to be observed ; first, that the intention of the parties, to be collected from the whole of the deed, is to govern : Secondly, that, where the construction is doubtful, the deed, or instrument must be taken favorably for the grantee.

In the present case, it may be contended on the part of the defendant, that no doubt arises on the face of the grant ; that there is no part which admits of two constructions ; and that, therefore, the end of the eighty-first line of " Brooke grove" must terminate the twenty-fourth line of " Addition &c." It is contended too that natural or artificial boundaries have always controuled course and distance :—But, from the nature of the present case, we must resort to things out of the grant, to ascertain the thing granted :—These are the certificates and plats of the two tracts " Addition &c." and " Brooke grove." By these, it appears, that the words of the grant are inconsistent :—If the twenty-fourth line of the former runs to the end of the *eighty-first* line of the latter, the subsequent courses cannot reverse as many courses of " Brooke grove :" Four complete courses of " Addition &c." must be left before we get to any course of " Brooke grove" to be reversed by an expressed course of " Addition."

It may, however, be said by the defendant, that the subsequent courses, as expressed, must be controuled by the artificial boundaries, to wit, the courses of " Brooke grove," whatever these may be, reversing them from the end of the eighty first line. But the chancellor conceives that just so many courses of Brooke grove as reverse the expressed courses and distances of Addition &c. are *called for* by the certificate of Addition as plainly as if they had been expressed according to their running for illustration. Suppose the certificate of " Black acre" to express a course thus : N 100 ps. reversing a *course of White acre*—It amounts to precisely the same thing as if it had said, *reversing the S 100 ps. line of White acre.* Here the chancellor conceives, a number of the courses of " Brooke grove" are, in like manner, described and called for; courses of Dickenson's choice likewise are called for. Take it therefore that calls in a certificate must be gratified, which is an established principle :—Where there are many calls, and all of them cannot be gratified, and, by discarding *one*, you may gratify all the rest, common sense surely requires the one to be sacrificed to the rest, more especially when, by so doing, the expressed courses and distances are all retained, and the vacancy between two tracts, which were intended to be joined, is prevented.

The chancellor has said nothing of the certificate for the party, which actually calls for the *eighty-fifth* instead of the eighty-first line. He did not esteem that certificate proper evidence; and there is enough to determine his judgment without it.

It has been contended by the defendant that if the land be actually surveyed, there will be found a vacancy, to be affected by his survey. But when it is considered that the twenty-fourth line of " Addition" must run to the end of the eighty-fifth line of " Brooke grove" and the defendant's certificate begins at that precise spot, and runs afterwards so as to comprehend the supposed vacancy made by running the aforesaid twenty-fourth line of " Addition" to the end of the eighty-first instead of the eighty-fifth line of " Brooke grove," he must be satisfied that the land claimed by himself and by the caveator is the same, and that every part of his survey is comprehended in the lines of " Addition &c." It has been urged that inasmuch as the chancellor's opinion, if in favor of the caveator, will be conclusive, but will not be conclusive if given against him, the caveat should be dismissed, and the parties left to the decision of a jury. The same may be said in every case of a caveat on the supposed interference of the certificate with a preceding patent. But if the chancellor, whose duty it is to decide according to his judgment, be clearly of opinion that the land contained in a caveated cer-

tificate has already been patended to another, he cannot possibly do otherwise than decide in the caveator's favour. Besides, it appears more reasonable that the patentee should be quieted in the possession of that which the chancellor conceives has been granted to him, than to afford a chance to him whom the chancellor conceives to have no colour of right, who never was in possession of the thing he contends for, and who appears to have made his survey upon mere speculation.

The chancellor has given his opinion thus at large, because the principles of his determination are not obvious, and because he wished to lay down those principles for the purpose of preventing trouble and expence to land-holders in future.

It is therefore, this eighth day of January 1791, adjudged that the caveat of Basil Brooke against John B. Magruder's certificate of *the Meadows*, 119¼ acres, be ruled good.

JOSEPH BLOUNT
a } *Caveat in the Land office.*
WM. PINDER.

THE defendant is seized of a part of each of the tracts of land, called Bishopton, and Collins's lot; which tracts lie contiguous to each other, and which parts are supposed also contiguous to each other:—Being desirous of having his said parts included in one survey, and of adding some adjoining vacancy, he applies to the register of the E. shore for a warrant of resurvey, and obtains a warrant to resurvey "*a tract of land* called *Bishopton and Collins's lot*." A certificate of resurvey is returned, and the surveyor certifies, that he has included the defendant's parts of Bishopton and Collins's lot, and has added adjoining vacancy: It appears, by the plat, that the said parts do not lie contiguous to each other, but that they are connected by the vacancy, or, in other words, that the whole survey contains only one body of land.

Against the said defendant's obtaining a patent on his certificate are stated several objections:

1. That there is no tract of land called *Bishopton and Collins's lot;* that from a warrant ought with certainty to appear the vacancy intended to be thereby taken, in order that no person may be deceived or prevented from applying for vacancy; that, the vacancy included in this certificate lies contiguous to a tract of land belonging to the caveator, and he has actually included it in a resurvey:—

2. That, even supposing the defendants warrant to be construed, justly, a warrant to resurvey *a tract of land called Bishopton*, and also a tract of land called Collins's lot, inasmuch as the defendant is seized of only parts of those two tracts,

and only those parts are resurveyed, the surveyor has not pursued the authority given by the warrant.—

3. That by the established rules of the land-office, two tracts cannot be granted by the same patent, nor can they afterwards be included in a patent, on a certificate of resurvey, unless they are certified, and appear to be contiguous to each other; and that the defendant's parts of the two tracts aforesaid do not lie contiguous to, or any where touch, each other.

After a careful deliberation on the merits of this caveat, the chancellor is of opinion, that it ought to be overruled.

It is his duty to determine according to equity, without violating positive laws, or established rules.

1. The defendant, being seized of a certain number of acres in Q. A. county, part of which lies in the tract called Bi shopton, and the residue in the tract called Collins's lot, has perhaps inaccurately given to his whole body of land the name of *Bishopton and Collins's lot*—but the intention of the warrant appears sufficiently clear; and the surveyor, and every other person, is sufficiently informed of the land intended to be resurveyed, viz. the defendants land in Q. A. county, Bishopton and Collins's lot. It could not indeed be mistaken, unless there were actually in Q. A. county a single tract of land called "*Bishopton and Collins's lot.*" The caveator himself alledges there is no such tract, and therefore the chancellor thinks himself in equity obliged to construe the warrant so as to authorize the surveyor to resurvey a tract of land called Bishopton, and a tract of land called Collins's lot, the warrant would otherwise be void; and by the chancellor's yielding to a nice objection, he might, perhaps justly, be accused of rather encouraging subtlety than of promoting substantial justice.

2. It is almost every days practice to issue a grant where the party seized of part of a patented tract of land has obtained a warrant, generally, to resurvey that tract, and has returned a certificate of the resurvey of his part only; and this practice prevailed along time before the judge of the land-office was, by law, directed to determine according to equity.

3. It is certain that by the established rules of the land office, a man cannot obtain a patent including several distinct tracts of land, nor can he obtain a patent on a resurvey of several tracts which do not lie contiguous, or in one body. But this objection can be of no avail to the caveator; because it is also an established practice, where a certificate of resurvey includes several tracts, and one, or more, is separate from the rest, to issue a patent only for those which lie contiguous to each other, with the vacancy adjoining them.—Suppose, then, the defendant, agreeably to this practice, to demand a patent of his part of Collins's lot, with the vacancy adjoining it:

the caveator then fails of his purpose, and the whole contested vacancy is adjudged to the defendant.

The only remaining question is whether the defendant shall obtain a patent for only his part of Collins's lot, with the vacancy, or whether substantial justice does not require that, inasmuch as his parts of Bishopton, and Collins's lot, lie very near, and are actually connected by the added vacancy, he may be immediately gratified, by having the whole of his land included in one patent :—This question concerns the caveator no more than any other individual.—The chancellor knows of no decision operating against the defendant :—He is, indeed, perfectly satisfied of the propriety of not comprehending several distinct tracts in the same grant, either on an original survey, or on a resurvey :—but he perceives not, that, to gratify the defendant would be repugnant to the true intention and meaning of the rule.—A grant for his parts of Bishopton, and Collins's lot, and the adjoining vacancy, will not be a grant of several tracts distinct and separate from each other :—It will be a grant of one entire body, formed by the union of three several tracts, viz. part of Collins's lot, the vacancy thereto adjoining, and part of Bishopton, adjoining that vacancy.

It is therefore, this twenty-second of March 1791, adjudged, and ordered, that the caveat of Joseph Blount, deceased, which has been supported by counsel on the part of Henry Downes, his devisee, be overruled, and that a patent issue to the defendant, William Pinder, on his certificate of resurvey.

BENNET HURST *a* JACOB MARKEY. — *Caveat in the Land office, against Markey's certificate of* Markey's-chance.

THE chancellor having heard the allegations, and examined the proofs, finds the caveat resting on the following grounds, viz : That the said Hurst, in the year 1785, purchased of the late intendant of the revenue either 402 acres, or 200 acres, of the reserves in Baltimore county, for the sum of £42, 10 ; that he has not yet returned certificates of survey for the full quantity purchased ; but that, even if he had, he is entitled to more than the quantity expressed, because the certificate of purchase provides, that if the land, intended to be purchased, shall prove more, the purchaser shall pay for the surplus : that part of the land, contained in Markey's chance is part of the land, intended to be sold by the intendant to the said Hurst, and is comprehended in a survey made for the said Hurst on the 10th inst. and that therefore, when Markey's chance was surveyed, viz. on the 5th

of August 1791, the aforesaid part of the land was not liable to a common warrant, being the right of the said Hurst.

The certificate of purchase does not describe or specify the land intended to be sold:—it is one of a number of certificates, given by the intendant for a certain number of acres in the reserves of Baltimore county, without ascertaining their precise situation, or giving any other designation than, generally, that they lie in the reserves.

There is a greater number of certificates of purchase, given by the intendant, the margins of which contain names, descriptions, or designations of the land, altho' not sufficiently certain and full; and, in some cases, the land so named, designated, or described, has, on caveat, been considered the right of the purchaser, altho' no survey had been by him returned to the office. The chancellor has admitted the caveat, because no time is limited by the contract with the intendant, or by any act of assembly, within which the survey is to be made.

In disputes also between purchasers from the intendant, of the first mentioned kind, viz. purchasers of land in the reserves without any particular name, description or designation, the chancellor has decided in favour of the party, who has produced some proof independant of the certificate of purchase, or entry in the intendants books, to ascertain the land intended to be purchased:

But hitherto there has been no contest between a purchaser of the first aforesaid kind, who has neglected to make his survey, and a person, who has had vacant land in the reserves surveyed under a warrant; there has been no contest of this sort, in which the purchaser has prevailed—there can indeed hardly be conceived a case in which he ought to prevail. For, if a man has chosen to purchase of the intendant, without any name or particular designation, and after vacant land in the reserves has been by law made liable to a warrant, he neglects to ascertain his purchase until some person discovers vacancy, and surveys it under a warrant, and if he then claims the vacancy, as comprehended in his purchase, the certificate of which, and the entry of which on the intendants books, gives no information, whereby the holder of a warrant may be cautioned against the invasion of another's right;—there must, in this case arise a presumption or at least suspicion, that the purchaser has waited, to avail himself of another's labour and money.

It hath been alledged, by a purchaser of the aforesaid kind, that, when he obtained a certificate of his purchase of a definite number of acres, which certificate provides, that, if the number should prove greater, he shall pay for the surplus, and, if less, he shall have a deduction,—he purchased a privi-

lege of securing, at option, all the vacancy to be found in the reserves, not sold by a particular name, or designation, to other people; and that therefore, whenever a vacancy is surveyed under warrant, he may come in and obtain it provided, at most, that he has not before obtained the full quantity, expressed in his certificate.

Now this cannot surely have been the meaning of the intendant; because several of these certificates have been granted to different persons:—they cannot each have an exclusive right to the same thing; and, supposing the intent of the intendant to have been to introduce a scramble amongst those purchasers, to the probable perpetual exclusion of all other men, he has intended what he had no power of doing—his authority was to sell; and it is essential to a sale, that the thing sold be certain, or at least reducible to a certainty, by some act or acts agreed, or implied, to be done.—Again, the intendant could not properly be said to make a sale when the contract was to be binding at the option of the purchaser only, without any limitation of time within which the option shall be made.

It is indeed difficult to assign a *good* reason, wherefore the intendant granted such certificates at all,—they appear intended to confer a privilege of hunting for so many acres in the reserves, not sold to others, and to stipulate that if the grantee can find so many, or more, he may secure them, at a certain price; and if he can find none, that he shall pay nothing, notwithstanding he has executed a bond for a certain sum, which must unavoidably be recovered, unless he can obtain relief from the legislature, or from the court of chancery, on the ground, that he has obtained no land, or not so much as his certificate expresses.

But, supposing the operation of his certificate to be, the giving him a privilege of hunting for vacant land, and of obtaining a patent or conveyance for it, when found, at a certain price (and the operation of his certificate or of the entry on the intendants books cannot possibly be supposed, without any other evidence of contract, to be more extensive or beneficial) he surely ought not, with success, to plead that privilege, against a person who has had a prior survey under a warrant, in consequence of a law, passed since the grant of the certificate, expressly subjecting vacant land in the reserves to be taken by a warrant.

The case before the chancellor is briefly this: Markey returns a survey under a common warrant, and is caveated by Hurst, who has had no survey at all of the land in dispute, but alledges that in the year 1785, he purchased from the intendant a part of the land comprehended in Markey's sur-

vey. The only evidence he produces of his contract is a certificate for *four hundred and two* acres in the reserves of Baltimore, sold to him by the intendant, but this certificate not ascertaining the precise situation of those 402 acres, he produces a certificate from Mr. Callahan, of his application, on the 3rd of December 1779 for one special warrant for 200 acres, another for 100, a third for 100, and a fourth for 40, amounting in the whole to 440 acres, all lying in the said reserves; and he now alledges, that the land in dispute was described by two of the locations in the said warrants.

There is however no evidence that Mr. Callahan's certificate was *ever* produced to the intendant, by way of ascertaining Hurst's purchase.—On the contrary, as this certificate and the intendant's certificate of purchase differ in quantity, there arises a presumption that it could not have been produced to the intendant, at any time *before* the sale.—Besides, even supposing it to have been produced at the sale, the description in the application being vague and indefinite, and no survey being made by Hurst on this land, until a few days ago, and after a lapse of seven years from the purchase, and after a variety of surveys made by him of other lands under his purchase, it ought not, without some further proof than appears, to prevail against a survey made under a warrant. There is this further consideration; the application was for warrant to affect lands not then liable to a warrant; and, if they were afterwards made liable by the act of Nov. 1781, ch. 20, yet, the application not being pursued, agreeably to the said act, it conferred no kind of right on Bennet Hurst; and there is no direction in any law for the intendant, in his sale of the reserves, to prefer those who had, at any time, made a fruitless application for warrant.

Upon these considerations, it seems to the chancellor to be perfectly clear that Bennet Hurst has not supported his caveat; altho' it appears that he warned Markey not to survey, and altho' the certificate of purchase should be deemed clear of error.—But it appears from the entry of the purchase on the intendant's books, that 200 acres had been sold to the said Hurst, at the price of 4s. 3d. per acre, making £42 10, instead of 402 acres for £42 10, which would be 2s. 1d. and the fraction of a penny per acre.—When it is considered further that 4s. 3d. per acre was almost the lowest price of land in the reserves, sold to others, it cannot otherwise be conceived than that the certificate is erroneous, and the entry right:—

Again—the chancellor considers the declarations heretofore made in his presence by the said Hurst with respect to his purchase, as a strong confirmation of the truth of the entry on the books—it appears too, from the information of the

register, that Hurst, a considerable time since, had returned surveys in the said reserves, as made under his purchase, amounting to more than 200 acres.

Upon the whole the chancellor considers the present case to be one of the least doubtful which he has ever known to be litigated before any tribunal whatever, and accordingly adjudges that the caveat be overruled, and dismissed. He has delivered his opinion at large, for this reason, amongst others, that what he has said will apply to other cases, and he wishes the principles of his decisions to be well understood.

October 19, 1792.

GEORGE SCOTT, *vs.* JOSEPH CHAPLINE. } *Caveat in the Land office.*

THE ground of the caveat is, that the land contained in the certificate was originally comprehended within the lines of a tract called "Well done," but is left out by the present running of the courses.

The legislature having never been able to discover a principle whereby the mischiefs arising from the variation of the compass might be prevented, and original runnings in all cases ascertained, has nevertheless directed that no patent shall issue for land which, in the opinion of the chancellor, may have been thrown out of the lines of a grant by variation of the compass. Whether it was the intent of the legislature that the chancellor should, for the land office, fix a ratio of variation, cannot easily be determined. That, indeed, there is a constant variation is certain: but, as he has never been able to find a rule agreeably to which the running of courses at any past period of time may be ascertained with precision;—as a decision in favour of a person who enters a caveat, on a ground similar to that of the present caveat, would prevent the matter from being tried at law; and as a decision against him would probably refer the parties to a fair trial at law; the chancellor has adopted only one rule on the subject; which is, in no case to allow the caveat unless the original runnings or some of them be fixed by positive proof, or by such pregnant circumstances as place the matter beyond a doubt. This, indeed, is the rule which appears to have obtained in the general court; and it seems the only rule which common sense can admit; for, altho' it be certain that the lines of every tract are, every year, changed by the variation of the compass, and altho' it seems reasonable to make some allowance; yet, inasmuch as the variation is different in different places, and at different times; as no general rule can be found, applicable to all cases, and as an arbitrary allow-

ance in any case would be inconsistent with the principles of justice, it has followed that there could be no allowance without proof of the original running of some one or more of the lines, whereby the allowance for all may be ascertained. It would then be strange if the chancellor knowing, or rather concluding from what is brought before him, that the grantee of an ancient patent could not establish his title before a jury, should, notwithstanding, admit a caveat on the principle that his title is good. The consequence of his so doing would be the keeping for ever vacant that land which a person has endeavoured to obtain in the usual way, and upon the usual terms, and which cannot be proved to have been before granted: the consequence, too, would be a diminution of the property of the state. So far for general principles. In the present instance we must believe it to have been the intent of the taker up of "Well done" to include the land now surveyed for George Scott: but there is equal reason to believe, that this intent has been frustrated by some error or mistake. For it requires an allowance of $2\frac{1}{2}$ degrees for about 29 years, to make the lines of "Well done" reach any part of the other tracts which it is alledged to have joined; and it appears that no allowance whatever will make the lines of "Well done" correspond with *their* lines. If the lines which are intended to reach another tract of land be too short, must not the consequence be this, that although the following lines may have the same length and direction with those of the other tract, there must be a slip or slipe between the two tracts?—In short, as there is in this case no proof whatever of the original running of "Well done;" and as the present running leaves out the land comprehended in Scott's certificate, the chancellor cannot do otherwise than dismiss the caveat and leave the parties, if they shall think proper to a contention at law.

The chancellor has delivered his opinion at large; because he considers this as a remarkable case, relative to variation, and because he wishes the principles on which he has determined it, to be well understood. On the same principles he has decided several other cases, which have come before him; and he deems it of importance that the constructions of the tribunal, which, alone, is appointed to expound a law be as well known as the law itself.

June 3d, 1793.

The chancellor having received an application from Charles Beatty for the rehearing of the caveat of Robert Peter against two certificates, returned in the name of the said Beatty, and the said application being made on the supposed

ground that the caveat of Peter and the caveat of Chapline stand on the same principles; the chancellor thinks proper to make some remarks by way of appendix to the aforegoing opinion.

He has said that in this case there was no proof of the former runnings of "Well done": his meaning perhaps, was not comprehended: It was, that nothing which could be received as evidence had been offered. It is to be remembered that, on the day first appointed for hearing the caveat, the certificate and plat of a survey of all the lands laid down at the request of the parties, by a deputy of the county surveyor, was produced. The lands were laid down according to the present running, and likewise with an allowance, for variation, of $2\frac{1}{2}$ degrees. The caveator relied on the second laying down, whereby it appeared, that almost the whole of the lands in dispute were comprehended within the lines of "Well done." But the chancellor having in no case made an allowance for variation without proof of original or former runnings of some one or more of the lines, and there being no proof whatever of the original, or former, runnings of "Well done," the caveat would have then been dismissed, had not the caveator made oath that he had reason to believe, and did believe, he should be able to establish the original or former runnings by proof. On this affidavit the decision was postponed from autumn to the following spring.

It had appeared, as before said, from the certificate and plat of the surveyor, that no rate of allowance for variation would make the lines of "Well done" correspond with the lines of those tracts which it was alledged to run with, so as to include the land in dispute. The surveyor was examined by the chancellor, and declared that he had revised his work, and was satisfied that it was free from error. Now, to establish actual former runnings by depositions it was necessary to have the lands again laid down in presence of witnesses, who might depose as to certain spots in the plat. This might have been done under the original order for laying down; by the surveyor of the county; or if any valid objections had been offered against the county surveyor, the chancellor, (as he has done in similar cases,) would have appointed some other person, obnoxious to neither party. But the caveator, without applying for such an appointment, thought proper to have the lands laid down, platted, and certified by Charles Beatty, without the consent of George Scott, who would not attend either the survey or the taking of depositions relative to spots in the plat, and objected against the plat as evidence. It was accordingly rejected, and the depositions which were taken merely to establish the work were of course of no efficacy. Matters then remained on the same footing on which

they were before, and a considerable delay having already been occasioned, and the chancellor conceiving from every thing which appeared, or was offered, that this case was peculiarly proper for the decision of a jury, the caveat was dismissed: and Chapline (if he be actually seized of "Well done," or part thereof) may bring his ejectment at law. It is however, to be remarked that Chapline produced nothing to establish his title, except a deed which was not recorded until several years had elapsed after the execution. The chancellor, indeed, did not dismiss the caveat on that ground, nor did he even decide upon it. He mentions it now to shew more clearly (if possible) that this case was proper for a trial at law. It remains now, to take notice of something else which was offered as proof of the original runnings of "Well done." It was an apparently old paper, said to have been the field notes of the surveyor who originally surveyed "Well done;" and it was alledged that every thing contained in the paper, was the work of the surveyor, who has long been dead. Now, this paper contained neither a table of courses nor a certificate of the surveyor, nor indeed any thing else from which it might be inferred that "Well done" run with the other tracts, except the delineation of a few lines, which were alledged by the caveator, and by Charles Beatty (who although not interested, has appeared on every occasion in support of the caveat) to be part of the lines of those tracts, as well as the whole of "Well done." But even supposing "Well done," to have been delineated in this paper by the surveyor, and that although it was perfectly correct, there was nothing but appearance to prove that the other few lines marked off were intended for the other tracts; and, if intended for those tracts, there was nothing to prove that they were made by the surveyor. In short, the chancellor conceived the paper of little consequence, even if the whole had been authenticated as the work of the surveyor. It was an outrage to common sense to consider a loose unauthenticated paper, produced by surprize, on a footing with the plat of the surveyor Priggs, and his deposition thereon, taken under an order, in presence of both parties: And the chancellor is convinced that no candid, impartial, honest man will think him inconsistent in his principles on account of having admitted the caveat in the case of Peter against Beatty, and dismissed the caveat in the case of Chapline against Scott.

ROBERT PETER, *agt.* CHARLES BEATTY, } *Caveat in the Land-office, by the Chancellor ruled good.*

On the application of Charles Beatty for a rehearing, the chancellor thinks proper to state the reasons of his decision.

The ground of the caveat was, that the land surveyed for Beatty was originally included within the lines of a tract or tracts of land formerly granted, and now the property of the caveator; and that, if not included by the present runnings, it is left out by the variation of the compass.

The chancellor, on several occasions has declared that having found no general rule for fixing the ratio of variation, he can make no allowance; and that, therefore, in every case of this kind, he will dismiss the caveat, and refer the parties to their trial at law, unless the caveator can produce direct or positive proof, or such pregnant circumstances as place the matter beyond doubt, that the land, claimed as vacant, was comprehended in the original runnings of a former grant or grants.

In the present instance, the land surveyed for Beatty (if it be vacant) runs between two tracts belonging to the caveator, called *Plain dealing*, and *Addition to Flint's discovery*: it appears from a plat, made by J. F. A. Priggs, surveyor of the county, in the year 1760, and the deposition of the said Briggs, thereon indorsed, that the caveator, being seised of the said two tracts, at one extremity took up a tract of land called "Little Chance," the lines of which ran from one tract to the other, and at the other extremity, took up another tract called "Fortune," the lines of which also run from one tract to the other; that in consequence thereof there was a considerable vacancy, bounded every way by the said four tracts of "Plain dealing," "Little chance," "Addition to Flint's discovery," and "Fortune": that the caveator then made another survey called "Success" the intent whereof was to secure the whole vacancy aforesaid; that he the said surveyor run the lines of all the said first four tracts and actually included all the vacancy in the aforesaid survey of Success: that in laying out the aforesaid three tracts, Little chance, Fortune, and Success, the given lines of Plain dealing, and the east line of Addition to Flint's discovery, viz. two lines parrallel to each other were made, the bounds and limits on the north and south: and that the said lines were closed by the said three tracts, as appears by the plat.

Again—The surveyor who laid down all the lands for illustration has certified and sworn to his whole work, and produced pregnant circumstances to prove, that the lines of Addition to "Flint's discovery" originally ran as laid down more than 30 years ago by Priggs, who laid down from a sworn witness the tract called Addition to Flint's discovery.

Now the said Beatty having made his surveys on the grounds that Addition to Flint's discovery ran differently from what was laid down by Priggs, and that the three tracts of Little chance, Fortune, and Success, did not comprehend all the

vacancy intended to be secured by Peter, and lying as aforesaid between Plain dealing and Addition to Flint's discovery, and having claimed as vacancy a part of that which is proved by Prigg's plat and deposition to have been intended to be, and to have been actually secured by Peter, more than 30 years ago, the question was, whether or not the chancellor could think otherwise than that the land in dispute was originally comprehended within some one or more of the tracts of land belonging to the caveator. If he does not allow the caveat in the present instance, he must totally disregard the directions of the act of Nov. 1781, ch. 20. sec. 12: and the intention of the legislature must be entirely frustrated. Had Peter, indeed, at the time of taking up of Success, been allowed to insert *calls*, the matter would have been placed beyond all doubt. Not being allowed so to do, it was impossible for him to do otherwise than he did to include in his survey of Success all the vacancy bounded by his four other tracts, unless he had thought proper to run the lines of Success into his other tract, and compound for land already belonging to him. He might, it is true, have taken out a warrant of resurvey on the 4 tracts; and that would have been the most eligible method: but this he was not obliged to do, nor can it be material to enquire wherefore he did not pursue that method. In short, the chancellor having no shadow of doubt that the land in dispute has been granted to the caveator; and the act of assembly being no less obligatory than any other law framed for the purpose of prescribing to him his duty; and equity and good conscience being, in his opinion, clearly in favour of the caveator, the decree could not have been otherwise than it was.

CHARLES BEATTY *a* ORENDORF. } *In the Land-office June* 10, 1793.

AS a great number of cases of this kind are brought before the chancellor; as there is no written law, from which the nature and operation of a special warrant may be fully known; as the usage of the land-office, and the decisions of its judges, in a great measure, constitute the law; the chancellor conceives it highly proper, on this occasion, to deliver his opinion at large. It is essential to the welfare of the people that not only the laws which affect liberty and life, but those also, which relate to property, should, in some manner be recorded, and not depend on memory and tradition.

For the purpose of laying the foundation of a patent for vacant land only, there have been provided two kinds of war-

rant: a common warrant is for taking vacant uncultivated land, wherever it may be found, and its nature and operation are well understood:—A special warrant is for taking vacant cultivated land or uncultivated land, at the pleasure of the party:—

But a special warrant generally goes further. It describes or locates a particular parcel of land, and in this case the party is at liberty either to take the land so described, and which no other person can affect so long as the warrant is unexecuted, and in force, or to take any other vacant land, not affected by any other warrant.—For one kind of warrant no more is paid to the state than for the other.

If, then, the object of a special warrant be to obtain a grant of land which the state, after issuing the warrant, can neither grant to any other person, nor compel the party to take, common sense declares, that the description or location ought to have some certainty or precision:—For although the exact lines, limits, or boundaries, cannot be expected to be set down before the survey is made, the description may at least point out to every enquirer the general situation of the land. It may, at least, enable a person to say of some spot or point, that it is comprehended within the tract affected by the warrant.

It cannot be supposed (for instance) that a special warran for ten acres can give an exclusive right to survey any ten acres in a tract containing one thousand:—so, a warrant for one hundred acres, contiguous to a tract, of which the outlines are altogether twenty miles in length, cannot be though to give an exclusive right to survey any one hundred acres contiguous to that extensive tract.—Accordingly, such uncertain, unprecise, locations have never prevailed against persons, making prior surveys under younger warrants. It is not sufficient that the land in contest may answer the vague description, when it appears that many other tracts would answer the description equally well.

The allowance of a vague description to bind all the land which may answer the description could be founded on no sound principle whatever. Either it would be prejudical to the state, or it would frequently enable one man to avail himself of the labour, industry, and money, of another:—Indeed a vague indefinite location can convey no other idea than this, that the party is not determined on the precise situation of his land, but intends, to pick and chuse during a whole year out of all the land answering the vague description, which may be discovered by himself or any other person—But a warrant without location would enable him to take any vacant land which he can find, and which another is not fairly entitled to.

A special warrant with a location is, however, proper; and he that obtains it, for the purpose of obtaining a particular tract, may easily secure it against a prior survey under a younger warrant, although he cannot do so by a description equally applicable to a different tract.—He may easily give such a location as will announce and explain his intention. The vacancy aimed at by a special warrant generally lies between two tracts, or is bounded by several tracts.—If it be contiguous to one tract only, the warrant may express the particular line, or the corner or extremity of the tract to which the vacancy is contiguous; the description may be enlarged, by inserting trees, hills, branches, fences &c.—In short it is the opinion of the chancellor that no other rule can obtain but this,—that the description of the warrant shall suit none but the land contended for, and it shall be so full and certain as plainly to point out the intention—

In the present case it has been contended that the party may be admitted to prove his intent by parol evidence;—But this appears inadmissible. Whenever parol evidence is admitted to explain the intent of a deed, or writing, it is the meaning of both parties which is to be enquired into.—Now, the state, which is one of the parties, can intend nothing but what appears on the warrant itself.—If the warrant does not describe, with certainty, the land to be affected, the state can be considered as meaning only to give him a right to survey so many acres, wherever the party can find them.—

But wherefore should parol evidence be admitted to ascertain that which from the nature of the transaction, and on account of the state, and of its other citizens, ought to be apparent on the warrant itself? for, until that parol evidence be actually produced, none but the party himself, or his witnesses, can know the intent. The establishment of such doctrine would tend to encourage fraud, and another consequence might be, that a warrant for fifty acres, contiguous to a tract of two thousand, would, from the uncertainty of the intent, prevent any of the land contiguous to that extensive tract from being taken up, so long as the warrant is unexecuted and in force.

It is thereupon, ordered, that the caveat be dismissed.

THOMAS SMITH *agst* JOSEPH CHAPLINE — *and* — JOSEPH CHAPLINE *agst* THOMAS SMITH

The chancellor, upon hearing these caveats, is of opinion that the location of Thomas Smith of the patented tract of land called True Establishment, on the plat returned in this

cause, is the true location ; and that forasmuch as the said location includes the whole of Joseph Chapline's tract, called True Friendship, the caveat of the said Smith against the certificate of True Friendship ought to be allowed.

The chancellor is further of opinion, that as the said location includes nearly the whole of Joseph Chapline's tract called Good Neighbour, the caveat of the said Smith against the certificate of Good Neighbour ought to be allowed ; and that the said Chapline if he thinks proper, may have an order for correcting the said certificate, by excluding all that part of the land which lies, agreeably to the said location, within the tract called True Establishment.

The chancellor is also, of opinion that the said Chapline's caveat against the said Smith's tract of land, called Eye-trap, ought to be allowed ; and that the said Smith, if he thinks proper, may have an order for correcting the certificate of Eye-trap, so that the lines thereof shall correspond with the lines of True Establishment, agreeably to the aforesaid location.

June 3, 1794.

THOMAS BEALL *vs.* DAVID LYNN. } *Caveat in the Land-office, October 16th*, 1794.

Dickeson Simkins, under whom the caveator claims, in virtue of a warrant, granted in the year 1786, returned a certificate of resurvey, in which was included vacant land, and on the said certificate a patent hath been issued.

David Lynn, in virtue of a special warrant dated January 14, 1791, returned a certificate of survey, in which is included the land aforesaid, patented to Dickeson Simkins ; and the said certificate is caveated by Thomas Beall, the assignee of the said Simkins, as aforesaid.

The land in dispute lies on the eastern side of Will's creek ; but it lies westward of a right line drawn due north from the most western corner of Fort Cumberland.

The said fort is situated on a point of land, formed by the junction of the river Potomac and the said Will's creek, the course of which, for about $1\frac{1}{2}$ miles from the fort, is about north north west or north west by north, and then about north north east or north east by north, until it reaches the Pennsylvania line, which is about three or four miles distant from the fort,—so that one, two, or three thousands of acres lie between the north line aforesaid and Will's creek, and the land in dispute as aforesaid is part of them.—

It is admitted that the said Will's creek is the eastern boundary of one of the manors long since directed to be laid out in the lands to the westward of Fort Cumberland; it is admitted, also, that Francis Deakins, who was appointed by the executive to lay down lands to the westward of Fort Cumberland, did not lay down any lands eastward of Will's creek:

The dispute turns upon this single point, whether or not under all circumstances, lands to the westward of Fort Cumberland must be understood to comprehend all lands lying westward of a line drawn from the most western corner of the fort, due north, to the Pennsylvania line; or whether the said creek, which is adapted by nature to serve as a boundary, ought not to be considered as the eastern limit of the said lands.

At the instance of the parties, the chancellor takes the liberty of requesting the opinion of the honourable the judges of the general court, whether or not, on the facts stated, the grant aforesaid to Dickeson Simkins is to be held void in a court of law.

The chancellor begs leave to refer their honours to those acts of assembly, also to state some other things, which he deems material to the question.

November 1781, ch. 20 sec. 2, appropriates all vacant lands to the westward of Fort Cumberland to the benefit of the soldiers of the Maryland line.

November 1784, ch. 75 sec. 3, and 6, enacts, that all grants for land lying within any manor to the westward of Fort Cumberland, and all grants issued, or to be issued, for lands to the westward of Fort Cumberland, on surveys or resurveys, in which vacancy is included made in virtue of warrants granted on or after the sixth day of October 1774, shall be void, and so held, and adjudged, in all courts of law and equity.

The resolves of April session 1787 direct the executive to appoint a person to lay down into lots the manors, and such parts of the reserves, and vacant lands, lying to the westward of Fort Cumberland, as he may think capable of improvement:—Under this act Francis Deakins was appointed; and he accordingly laid down the lots, and returned a plat, which is deposited in the land office.

November 1788 ch. 44, sec. 13, enacts, that any of the lands lying to the westward of Fort Cumberland, not therein appropriated, *and to affect which no warrant had been issued*, shall be liable to be taken up by warrant.

The lands appropriated by that act were 4165 lots laid out by Deakins to the westward of Will's creek,—and David Lynn, considering the land in question liable to be taken up

as vacancy under that act and the former act for avoiding grants, hath obtained a warrant and returned a certificate of the same as aforesaid.

General Court for the Western Shore, May Term 1795.

Having heard counsel on both sides, and considered the foregoing case, we are of opinion—that all land in that part of Washington county (now called Allegheny) lying to the westward of a line drawn due north from the most western corner of Fort Cumberland to the Pensylvania line, is included within the appropriation made by the second section of the act of the general assembly of November session 1781, chapter 20:—and that in virtue of that act, and the act of November session 1784, chapter 75, the grant stated to have been issued in consequence of the warrant to Dickeson Simkins is void in law.

SAMUEL CHASE,
JEREMIAH TOWNLEY CHASE.

On the above opinion it is adjudged and ordered, that the caveat of Thomas Beall against David Lynn's certificate of a tract of land in Allegany county, called Lynn's mill seat, be and it is hereby dismissed.

NORMAN BRUCE & WM. DIGGES, *vs.* WILLIAM SHIELDS. } *In the Land-office, Nov. 8th*, 1794.

The said Norman Bruce and William Digges, with Benedict Calvert, who hath since died, having entered a caveat against the said William Shields, certificate of Shield's adventure, in Frederick county; and the said caveat having been heard by the late chancellor, and by him ruled good; and the said chancellor having thereon passed an order directing the said certificate to be corrected; and the surveyor of Frederick county having represented that the said order is to him unintelligible, and having therefore prayed the chancellor to instruct him relative to the execution of his duty, in obedience of the said order, and the said Shield having filed a petition, praying that the said order may be reversed and set aside and that the said caveat may be again heard; and the chancellor having considered the said order, and the plats therein referred to; and the said order appearing to him to be either vague or uncertain, or (if construed so and to convey a meaning consistent with the caveator's pretensions) to di-

rect that which is repugnant to the established rules and practice of this office.

It is thereupon adjudged and ordered that the said order of the late chancellor, passed December 26th 1783 be reversed, and wholly set aside, and that the caveat be considered as reinstated, and that all things be in the same state and condition as if the said order never had been passed; unless cause to the contrary be shown on or before the third Tuesday in April next; provided a copy of this order be served on the said Norman Bruce and William Digges before the first day of February next.

—

N. B. The chancellor thinks proper to protest against any construction of the within order into a precedent for one chancellor to rehear or rejudge the decision of another chancellor.

A judge of the land office may indeed on some occasions with propriety revise his own decision, and if he reverses it, his determination must be considered as the result of mature deliberation and better judgment: But there can be no such reason for his setting aside the judgment of his predecessor whose opinion even if it were not prior in time, must in point of law be considered as equal to his own.

Much inconvenience, indeed, would follow if the decision of a judge, in any particular cause, should be considered as no longer binding than whilst he remained in office. The sure consequence of establishing such a precedent would be that, whenever a new chancellor should enter on his office, an application would be made for the rehearing of a caveat already decided, in every case in which the fruit of the decision should not have been obtained.

It was merely on account of the surveyors having stated the former chancellor's order to be unintelligible or impracticable, and of its appearing in that light to the chancellor, that the within order was passed.—It appeared to him as the only expedient for rendering justice to the parties.—It was clear that Shields was, under the late chancellor's decision, entitled to a patent on a corrected certificate, and yet so long as an order which has proved to be impracticable remained in force, he could not obtain the patent.

After all, it was on great deliberation and with reluctance that the chancellor passed the within order.—He is aware that it may seem an extreme nice matter to distinguish between such a proceeding and the rejudging of a decision of his predecessor.

Nov. 11, 1794.

JOHN ASHTON *agt* PHILIP HAMMOND } *Caveat in the Land-office, against the certificate of* Hammond's Right, *February* 17, 1795.

The allegation of the caveator is that Hammond's right, surveyed for the defendant as vacancy, is contained within the lines of an ancient patented tract in the seizin of the caveator, called Ayno, granted for 400 acres.

The present case is not that of a man contending that the land attempted to be taken up as vacancy, is comprehended by the *original running* of an ancient grant, tho' now excluded by the variation of the compass. He insists that the present running of the course expressed comprehends all the defendant's pretensions; he rests in the first place on what he denominates a call in his grant, to carry the sixth line far beyond the distance expressed; and, in the next place, he insists that the seventh line shall run the course expressed in defiance of the defendants evidence, produced to shew the former running, and the general reputation concerning the termination of the line.—How far the call *for the line of an elder tract* ought to be gratified has perhaps never been determined; nor perhaps has the point ever been fairly debated or understood. The chancellor conceives the following distinction to be rational:—Wherever there is such a call, and it appears to correspond with the other expressions, and with the general intention of the grant, it shall be gratified, notwithstanding the line is thereby greatly lengthened, and the quantity of land increased: But wherever the other expressions in the grant are such as to induce an opinion that the call was grounded on a mistake relative to the running of the elder tract, the call is to be disregarded, and the party confined to his course and distance. However, in the present case, not only a line of "Whiteshall" is called for, but there is likewise a call for a tree, which is also the boundary of an adjacent grant, describing the very same course. This tree is expressly proved. On the suppositoin of its being the true boundary, a tract of land lying between "Ayno," and "Whiteshall" has been taken up;---possession has been held accordingly; and it is remarkable that, by going to that tree, the sixth line of "Ayno" is made at least 100 perches longer than the distance expressed in the grant. If the caveator, notwithstanding, should insist that both calls may be gratified, viz. that the line may first go to the tree, and then be continued to the line of "Whiteshall," it may be asked "wherefore was the tree called for at all?"---If that indeed be the true construction of the grant, the expression ought to have been this "thence E and by N, by a red oak, to the N. W. line of Whiteshall"---But who ever heard of such a call in a grant? The fact is,

that the grant expresses the red oak to be standing *in* the said N. W. line; the red oak is proved not to have stood in the line; and it is clear, from the expressions, that the red oak was to be the termination of the line. On the whole, it appears to the chancellor that any attempt, at this time, to carry the line to "Whiteshall" is almost an insult on common sense. We come now to the second point: It seems that a N W course, which is actually called for, from the red oak to the N branch of Patuxent, will take in all the land claimed by the defendant; and as there is no tree, point, or spot, on the Patuxent, called for, the caveator contends, that nothing ought to controul the course. The defendant insists, that, supposing his proof of the actual running to fail, there ought to be an allowance for variation, which would leave him a part of his pretensions. But no such allowance ever has been made in this office, against or for a patentee; altho', in favour of a patentee, the chancellor is authorized to correct present runnings of courses by *actual proof of the original runnings*.—If then, there were no other circumstances in this case, the caveat would without hesitation be allowed.

It is to be remarked that this N. W. course, to reach Patuxent, must run at least 250 perches through "Luggor" an elder tract, of which it takes at least 35 acres: and that this running will make "Ayno" contain at least 880 acres, instead of 400. It may here be observed too that, according to the plat in this cause, if "Ayno" should run to "Whiteshall," and the N W. course thereof should be continued to Patuxent, Ayno would contain at least 1100 acres. But the most remarkable circumstance of Ayno is this; that the survey (if actually made at all) never could have been made with precision. Only the 6 first courses express distances, almost every one of which appear to be extended by the calls for trees. The 7th course, which is the course in question, if it must be N W, not only runs through an elder tract, and gives almost treble the quantity, (as has already been said) but is of the unreasonable length of, at least, 650 perches: it comes to no point on the river, and it strikes the river aslant.

It has always appeared to the chancellor that the true locations of those ancient tracts of which evidently no actual complete survey was made before the grant must depend on proofs. It strikes him, that the surveyor, and party, having got to the red oak at the end of the sixth course, determined to go thence to Patuxent, and fixed on the point at G. which appears from the plat peculiarly proper for a boundary. The distance being at least 500 perches, thro' woods, and perhaps broken grounds, they did not actually run it:---Nay, it is absolutely certain that they did not measure the distance of the seventh course, because the certificate has not expressed it.--

It is improbable, whatever point of Patuxent was meant for the end of the seventh line, that it was in view of the surveyor at the red oak. It would be a matter of labour and science to take any two distant points, and ascertain the bearing of one from the other. This then seems likely ;—the surveyor having resolved that the point G should be the end of the 7th line, he made a shrewd guess at its bearing from the red oak, and, without measuring the distance, set it down N. W.— The party then, knowing the intent, occupied, let the land accordingly ; and hence it is that we have strong proof in the cause that G was considered as the end of the seventh line. That such proof will controul the expression of N. W. on a trial by jury, the chancellor cannot presume to say ;— But inasmuch as his conscience is far from being satisfied that the land surveyed for the defendant is contained in the tract called " Ayno," he cannot think himself justifiable in admitting the caveat. He considers, that an admission of the caveat puts an end to the caveator's pretentions, and that by allowing the defendant to take a patent, he only leaves the parties to a contest before that tribunal which is fitted to decide ; where every proof which can throw light on the subject will be produced, and where the judges of fact will be instructed by judges of law. As, indeed, the subject of dispute, with respect to the caveator will be only whether, under a grant for 400 acres, he shall hold 861 or only 754, he cannot reasonably deem it a hardship to be referred to that tribunal. It might indeed seem monstrous, if, under the circumstances of this case, the chancellor should give a decision which would bar the defendant for ever, and which might probably deprive the state of caution money to which it is fairly entitled.

It is thereupon adjudged, and ordered that the caveat of John Ashton against the certificate of a tract of land called " Hammond's right" containing 107 acres, be, and it is hereby, overruled, and dismissed.

THOMAS HARWOOD *vs.* JOHN RICHARDSON. } *Caveat in the Land-office against the certificate of a tract of land called* Conclusion.

THE chancellor has examined the papers filed by the parties, together with the original certificate and plat of " New Holland renewed."—It appears to him, that the parties have directed this tract to be laid down arbitrarily, and that none of the delineations made by the surveyor, in pursuance of their directions, can be supposed right, or to correspond with the grant.

The plat for illustration specifies neither the length, nor direction of the lines, nor the actual contents, according to any one of the delineations; and it is evident, from a comparison of the said plat with the original plat that although the surveyor certifies, with respect to several of his delineations, that from certain points or terminations of lines, he has laid down "New Holland renewed" according to its courses and distances, the fact is not as he has stated. For in order to arrive at the point D, agreed on as a boundary by both parties, he has been obliged to vary materially from the 19th course as expressed in the orignal certificate. With respect to the mill seat, the testimony is strong on each side; and although it is evident that whichever of the spots laid down for the beginning be right, there must be an interference of the tract called Conclusion, the chancellor cannot undertake to decide in what manner the certificate of Conclusion may be corrected, so as to exclude precisely that part which is comprehended within the lines of the mill seat. He conceives, under all circumstances, that the dispute relative to the mill seat is, in all respects, peculiarly proper for the decision of the jury, in a court of law.

Should he dismiss the caveat, and permit Mr. Richardson to take a patent, the caveator will still be in a condition to have his right tried at law. If, on the other hand the caveat be ruled good, there is an end of great part of Richardson's pretensions. It is plain, then, that the caveat ought not to be ruled good, unless the chancellor be perfectly convinced of the alledged interference, and unless the extent of it can be ascertained. But it is impossible for him to have that conviction, from the plats, certificates, and depositions, now before him, and if he should proceed to decide upon *them* only, he cannot do otherwise than dismiss the caveat. This however, he is unwilling to do; provided he can receive further information on the subject, within a reasonable time.

It is, certified by the surveyor, that the points, figure 8, and letter D, on the plat, by him returned for illustration, are agreed to be boundaries of New Holland renewed; and the chancellor conceives, that 8 must unquestionably be the termination of the second line. For, by an established rule of the general court, and of this office, all calls, if it can consistently be done, must be gratified; and 8 appears to be at the west side of the branch, as well as a boundary agreed on by both parties. There is as little doubt that D is the true boundary or termination of the 19th line. Suppose, then, the surveyor again set to work. Let the spot 8, be the end of the 2nd line, and thence run the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th lines, according to the actual courses and distances ex-

pressed by the original certificate and grant. It is certain that, from the variation of the compass, the spot will not, from that running, turn out to be the end of the 19th line. But as 8 and D are known to be boundaries, and, as one is to be the end of the 19th, and the other the end of the 2nd line, the surveyor may discover, by running again, or by repeated runnings, the allowance for variation requisite to hit the spot D, extending or shortening the 19th line, as the case may require. And when the requisite allowance shall be thus found, the proper allowance for all the other lines will be discovered, according to another rule of law. It is extremely probable, that, if all this shall be done, the chancellor, or any other tribunal may be enabled to render justice, so far as respects the tract of "New Holland renewed." There is no tribunal, which, with an understanding of the dispute, could adopt any one of the delineations in the plat for illustration, as the proper way of laying down "New Holland renewed." The chancellor does not think proper to *direct* that which he has suggested, to be done. He leaves it entirely to the discretion and choice of the caveator, with a declaration, that if no further proof, or illustration, is to be offered, he must dismiss the caveat, and leave all matters to be decided by a jury in case either party shall think fit hereafter to institute an ejectment.

N. B. The grant of "New Holland renewed" calls for a tree, at the end of the line next to the given line. It is perhaps unnecessary to remark that if the said tree be known, the call must be gratified by running the line to it, although the course may thereby be altered as to both length and distance.

HUGH WHITFORD *agt.* BENJAMIN JONES and vice versa. — *Cross caveats; In the Land-office, Nov.* 16, 1796.

It appears that the said Whitford, on the 30th day of July 1794, took out a warrant of resurvey on "Whitford's adventure," and, on the 13th day of November following, returned the certificate of Hugh's adventure, surveyed on the 11th of September, containing considerable bodies of vacancy, which are now in contest between him and Jones.

The said Jones claims under a purchase from the intendant of a lease, said in the certificate of sale to contain 41 acres and of 60 acres of *valuation*.

In virtue of the said purchase, the said Jones had a survey made by a special surveyor, containing 226 acres, in which

appears that the lease was comprehended, and that, instead of forty one, it contained 46½ acres. The rest is all called vacant land added, to the amount of 179½ acres, at the pleasure of the party, without regarding the courses of the valued land, which appears to have been regularly surveyed, under the name of "Buck's lodge." The certificate of sale expresses, that, if on survey the land should turn out to be more, the surplus should be paid for, and if less, a deduction should be made. It corresponds with the intendant's other certificates of sale, and it is wonderful that the meaning of it should have been construed into a licence to add vacancy at pleasure. Its meaning is nothing more nor less than this:—"The "state sells you a tract of leased land, and a tract of valu-"ed land; the quantity of both is supposed 101 acres; if "there be more, you shall pay for it at the stipulated rate; if "less, you shall have a deduction."

It is true, that in some cases, where purchasers have added vacancy, on the supposed licence, and no contest has afterwards taken place, they have obtained patents, on paying &c. But in every case where a person has claimed the vacancy in virtue of a warrant, intended to affect it, and executed accordingly, has the party been allowed a patent, without a correction of his certificate. The matter is too plain for doubt, or controversy: the said Jones, however, has returned a second certificate of his purchased land, made out by the county surveyor, which comprehends (as he says) all the leased land clear of elder surveys, to the amount of 45 acres, and 60 acres of vacancy added, in the whole 105, instead of 101 acres expressed in the certificate of sale.—It appears, from the plat for illustration that, although the quantity of vacancy corresponds with the quantity of valuation land, the survey is made without any regard to the courses of the valuation land (said to be Buck's lodge.)

From what has been said, the chancellor conceives that the matter is brought to a point. Wherever either of Jones's surveys of his purchases interferes with the lawful pretensions of Whitford, under his warrant of resurvey, the said Jones must submit. Wherever Jones's surveys do not interfere with Whitford's lawful pretensions, there can be no ground, *in the present contest*, for refusing Jones the benefit of one or the other of his surveys.

What then are the lawful pretensions of Whitford? By the rule or practice of this office established long before the chancellor's time, the warrant of resurvey entitled Whitford to all vacancy contiguous to the original tract to be resurveyed;—and if all the vacancy he has added to the said original be contiguous, he is entitled to the whole.—But it appears

from the face of Whitford's plat, that he has added vacancy which is not, according to another established rule, contiguous to his original : It appears that the first piece of added vacancy is no way joined to the main body, unless by an angle of one touching or running up to the angle of the other in the following manner.

The rule is, that if an angle of one tract runs up or touches an angle, or even side, of another tract, there is no contiguity between that other tract, and the land contained within the two lines forming the angle.—

This rule has been laid down with great attention, and if it were not observed the privilege under a warrant of resurvey (*a*) (founded as it originally was on no rational principle of law or common sense) would, in many cases, extend almost beyond bounds.

It appears therefore to the chancellor that the vacancy marked B, in Whitford's resurvey, must be excluded, and that nothing is shewn to deprive him of vacancies C and D, inasmuch as they do not appear to be contained either in the leased land or the valued land sold by the intendant to Jones.

Whitford being thus excluded from vacancy B, there is no apparent objection against Jones's certificate of Jones's surplus, which is clear of every other part of Whitford's resurvey.

With respect to Jones's two certificates under the purchase, the caveat must be admitted, because they both interfere with Whitford's vacancy, C.

What then is finally to be done with these certificates ? the one returned by Clark comprehends the land contained in the certificate of Jones's surplus, which at present appears to give Jones a title to the land. The said certificate of Clark ought not, indeed, under all circumstances, to have been returned ; and it would be eligible to have it vacated.—The other certificate of Jones's purchase, made by the county surveyor, may be corrected, by excluding Whitford's vacancy C, provided Jones is willing to incur the risk of future caveats by other persons, under acquired warrants or otherwise. Let it be repeated, that Jones, under his purchase, had no clear indefeazable right to a single acre not comprehended in the lease, or valuation, mentioned in the certificate of sale.

(*a*) *Note.*—The chancellor undoubtedly means here the privilege of adding all contiguous vacancy, and the warrant of resurvey itself.

He may, if he thinks proper, have vacated both the certificate of Rogue's harbour, made by Clark, and the certificate of Jones's purchase, made by the surveyor; and he may then have a new certificate returned, comprehending just his real purchase; or he may have an order for correcting the latter certificate, so as to exclude Whitford's vacancy C.

It is adjudged and ordered, that the caveat of Hugh Whitford against the certificate Jones's surplus be dismissed; that the said Whitford's caveat against the certificate of Rogue's harbour, and the certificate of Jones's purchase be admitted; that the caveat of Benjamin Jones against the certificate of Hugh's adventure be also admitted; and that orders, agreeably to what is herein before mentioned, shall, on application, be granted.

N. B. The chancellor omitted to mention one fact, which was, that at the time Whitford took out his warrant of resurvey, and even when he returned his certificate, there was no certificate of Jones's purchase returned, so that he could not with any plausibility claim, under his purchase, vacancy contiguous to Whitford's patent, and not comprehended in his the said Jones's purchase.

Now that the certificate of purchase is returned, no man, perhaps, hereafter, can with plausibility claim as vacancy, under a warrant hereafter taken out, the land comprehended in the certificate of Jones's purchase.

November 17, 1796.

NELM *agt* SMITH } *The dispute turns upon this single point; what is the termination of the* 11*th line of Kirkminster?*

The expression in the certificate is, "thence W 126 ps. to "a marked white oak, standing upon the north side of the "branch first mentioned, where the first bounder standeth, "and upon the east side of a glade, that runneth into the said "branch, being a *corner tree* of a tract of land *surveyed for* "*Phœnix Hall.*" The caveator lays down Kirkminster so as to run to a spot which he contends, and which he offers deposition to prove, to be the beginning of a tract called "Dogdown bottom," surveyed for Phœnix Hall, which tract, he says, was the only tract in the neighbourhood, or county surveyed for Phœnix Hall. The deft. admits the allegation that the said "Dogdown bottom" was the only tract surveyed for Phœnix Hall.

If the 11th line of Kirkminster be as contended by the caveator, its course is nearly opposite to the course expressed, which is west, and the length of it is much shorter than the

distance expressed. However, there is no doubt, that when a natural boundary is called for, and can clearly be proved to be the boundary meant by the certificate, the call is to be gratified, and the course and distance disregarded.

In the present case, there is no proof whatever that the original running of the said 11th line carried the surveyor to the spot contended for by the caveator; and it is even denied, by the depositions produced by the deft. to be the beginning of "Dogdown bottom." Besides, the spot appears to be on the south side of the branch instead of the north side, expressed in the certificate.

Now it would seem strange if the south side of a branch was actually meant when the north side is positively expressed. And nothing short of clear positive proof could possibly be admitted to establish a boundary contrary to a plain positive expression. Here then is another powerful objection to the caveator's pretensions. When it is added to the beforementioned objection relative to the course and distance, and to the objection, that the name of "Dogdown bottom" is not expressed; and when it is considered, too that the beginning of Dogdown bottom is now uncertain, and that there is no proof of the actual original running of the said 11th line of Kirkminster by the surveyor, and that Kirkminster, run according to the courses and distances expressed, gives the quantity expressed; it is impossible for the chancellor to admit the caveat.

By admitting the caveat, the chancellor would not only undertake to decide that the termination of the aforesaid 11th line is clearly as contended by the caveator, but he would put it out of the defendant's power to have the matter tried by a jury, under the direction of a court of law.

What the determination of a jury may, or ought to be, the chancellor cannot pretend to determine: but he conceives the case as proper as any that ever came before him for a decision at law, and therefore dismisses the caveat.

SAMUEL SELBY, *vs* FREDERICK GRAMMAR } *In the Land-office, Jan.* 25, 1797.

The chancellor having considered the arguments, in writing, of the counsel on each side, the act of assembly relative to the subject, and the rules and practice of the land office, is of opinion that, inasmuch as it is not even alledged that Gilpin's warrant was in any manner altered, or changed after it was issued from the office, the time for compounding thereon was from July 5th 1794 to July 6th 1795 exclusive of the said 6th of July; that Grammar's warrant, taken out 4 days

before the end of the time, was premature, and that the caveator being the first and only applicant after the time, is entitled to a preference. In so deciding, the chancellor by no means would have it understood that he supposes absolute verity to reside in either a warrant from the land office, or in the record thereof, made out (with great propriety) by the register.

at any time it shall be alledged that the date, or description of land, or any thing else contained in a warrant, hath been altered, the chancellor conceives that evidence may be admitted to support the allegation, and that if the allegation shall be thereby established, the warrant will be adjudged void, or amended, according to the circumstances of the case, and to the dictates of common sense and equity. In the present case it appears to the chancellor that a mistake was made by the register, in dating the warrant July 5th instead of June 26th. Whether or not that mistake could have been corrected, so as to prevent the warrant from continuing in force beyond the day when it ought to have expired, it is not material to examine. But certain it is, that, at the time of issuing the warrant, no individual citizen was legally interested in having the mistake corrected. None but the state, and Gilpin, had any kind of concern in the business; and, if a correction could have been made, the chancellor would certainly have been bound to take care that Gilpin should not suffer from the mistake. For instance, suppose the state's proper representative had, within the year, applied to the chancellor to correct the mistake, and Gilpin had not had notice thereof, so as to have his survey made, his certificate examined, and the land compounded on before the 27th of June 1795; can it be supposed that the chancellor would not have awarded a patent on a certificate of survey, made out and compounded on before the 6th of July following, there being only nine days difference between the actual and the proper date?—At the same time, the chancellor would not have it understood that, in no case, can a citizen suffer from the misconduct or mistake of an officer of the state. There is a plain material distinction between a case like the present, and a case in which a citizen, to effect his purpose, must procure something to be done within a limited time. For example—had Gilpin's warrant been dated, as it ought to have been, June 26, 1795, and he had immediately delivered it to the surveyor, from whose neglect, or mistaking July for June, a certificate was not made out, so that Gilpin could compound within the year. In such a case, Gilpin might inevitably have suffered from the misconduct, or mistake of the officer.

It has been said, very justly, by the caveator's counsel, that in the present instance, the caveator's case is within the express provisions of the law. Gilpin's warrant is dated July

5, 1794—no survey having been made under it, and of course, the land not compounded on before the 6th day of July 1795, the caveator was the first and only applicant for a warrant after the expiration of the time allowed for compounding; and Grammar's warrant having issued before the expiration of the time, is entitled to no more consideration than if its date had been cotemporary with Gilpin's warrant. Grammar, however, contends, that as he proceeded according to the records of the office, and the mistake was not in the record, but in the warrant, he ought to prevail. Should this be the case, he would be allowed to profit from the mistake of the register, in a transaction to which he was not a party, and in which he had no interest. Again—the chancellor has intimated that, had Gilpin executed his warrant, he might have compounded on the land, after the date of Grammar's warrant, at any time before the 6th of July 1795. It would be absurd to suppose this and to suppose, at the same time, that Grammar's application was not premature.

Upon the whole, it is adjudged and ordered, thatthe caveat of Samuel Selby against Frederick Grammar's certificate of a tract of land in Allegany county, called "the Lilley" be, and it is hereby, adjudged and ruled good.

THOMAS JOHNSON
vs
ADAM HAWN
} *In the Land-office; June* 18, 1799.

The caveator objects to the certificate on the ground that the land comprehended in the certificate is contained in an elder grant. This elder grant describes the beginning of its land to be at a particular tree, standing a certain number of perches from the beginning of a line, in each of two other tracts of land, and it besides has several calls.

The caveator contends that the beginning is at a place, far distant from the beginning contended for by the defendant; and, by either of the beginnings, all the calls cannotbe gratified.

It appears, that the deputy surveyor who was supposed to have originally surveyed the land has sworn to the beginning insisted on by the caveator: but there is testimony produced to refute or discredit the surveyor's evidence. In short, supposing the chancellor were the proper and sole judge of location, it would be extremely difficult for him to decide on the running of the said elder tract: and it seems extremely uncertain how any tribunal whatever will ascertain the lines. The chancellor conceived that the established rule, in cases of this kind, was too generally known for the caveator to contend against placing the defendant in a situation to have the dis-

pute fairly tried at law. In cases of this kind, the admission of the caveat puts an end to the dispute. There is no appeal from the chancellor; and the defendant can make no title in an ejectment. But by the dismission of the caveat, and allowing a patent to the defendant, either party is in a condition to have the title tried by the proper established tribunal. The established rule therefore is this, that unless the caveator, who alledges, that the land is contained in his grant can support his allegation beyond doubt, the matter shall be referred to a decision at law.

It is impossible for a man acquainted with our constitution and laws to believe that the legislature intended to make the chancellor not only a judge of title and location, but a judge without appeal. Is it not indeed notorious, that, in every cause before the chancellor where there arises an important question, of either law or fact, it is the invariable practice to submit it to the general court, or its jury?

After all, it must be allowed to be extremely difficult to distinguish between cases in which no doubt can be entertained, and questions in which there may be a difference of opinion: but every consideration of this kind must have a tendency to increase the chancellor's caution. If in the present case he should admit the caveat, he is satisfied there are few persons, acquainted with the nature of the dispute, who would not censure him for usurping the office of a jury, and who would not say that the law under which he acted, or rather his conduct under a law, is a violation of the principles of the const tution.

It is adjudged and ordered that the caveat be dismissed, but that each party bear his own costs.

NATHAN PRATHER, *against* ZEPHANIAH PRATHER'S certificates of "Lucky discovery" and "Prather's chance."

Caveat in the Land-office, Nov. 28th 1794.

By the practice of this office, which had obtained before the revolution, and has been since pursued, a man possessed of common or special warrant of one acre only may survey any quantity of vacant land not affected by any other warrant. This practice, although it may in some degree affect the revenue of the state, cannot be productive of wrong to individuals; because no man can have an equitable pretension to that land which has already been surveyed for another, and which he himself had not before the survey contracted or applied for.

But, whether a common or special warrant, under which a survey has already been made of more land than is express-

ed in the warrant, can, by any device, authorise a second survey, is the question which has never been decided on caveat in this office. It is true that where the same warrant has been applied to two surveys, each of which contained more than the whole quantity expressed in the warrant, and there has been no dispute, a patent has issued on each survey, after the certificates have been fully compounded on: and this practice can neither be productive of wrong to any individual, nor affect the revenue of the state.

But whether, *on caveat*, one warrant shall be permitted to cover two surveys, each of which is equal to, or greater than, the quantity expressed in the warrant, is another question, which, as it is suggested by the circumstances in the present case, it will be proper to decide, before any other case may arise in which it may be material;—and the chancellor is decidedly of opinion that he who claims under a survey made in virtue of a warrant which is applicable, and which has been applied, only to that survey, must have a better pretension than he who claims under a survey made (as it is said) in virtue of a warrant which had before been applied to a survey containing the full quantity, or more than, expressed in the warrant. Let the device of splitting a warrant into two or more parts, and applying each part to a survey containing more than the whole warrant, be used, as it has been to secure lands concerning which there is no dispute. The party who thus obtains a patent has abundant advantage, in obtaining a credit which originally was not intended to be given.

This opinion, however, is not to decide the present case, to which, although it suggested the question, the opinion will be found not strictly to apply.—The case is this. Z P having obtained a special warrant for five acres, in virtue thereof, returns two surveys, one containing $4\frac{1}{2}$ acres, and the other $5\frac{1}{4}$ acres. To one certificate the surveyor says he has applied too acres of the said warrant, and to the other he says he has applied 3 acres. Both certificates are dated on the same day, viz. Oct. 17th, 1793.

Two days after this, N P obtains a special warrant of resurvey, under which he returns a certificate, containing an original tract, and likewise the two tracts surveyed as aforesaid for Z P, as two pieces of vacancy contiguous to the original.

Now, the material consideration in this case is this; that if the surveyor had applied $4\frac{1}{4}$ acres of the warrant to the survey containing that quantity, there would have been left $\frac{3}{4}$ of an acre, in virtue of which, agreeably to the practice first mentioned, might be secured the parcel containing $5\frac{1}{4}$ acres.—What the surveyor might have done, to cover surveys made before the date of the warrant under which the

caveator claims, the chancellor considers as done. A mistake of the officer which is apparent on the face of the papers ought not to affect the party. The equity of the case is clearly on his side, and the caveator has nothing to complain of. At the time of the caveator's obtaining his warrant, Z P had made his surveys ; and, at the time of the caveator's making his survey, Z P had fully compounded ;—and before Z P had made his surveys the caveator had done nothing to obtain a title.

It is thereupon adjudged and ordered, that the caveat of Nathan Prather be dismissed, and that no patent issue on the certificate of " Nathan's meadow enlarged," unless it be first corrected by excluding those parts which are contained in the certificates of " Lucky discovery" and " Prather's chance."

WILLIAM HOFFMAN *agt.* JOSEPH WALKER — *Caveat in the Land-office agt. Joseph Walker's certificate of a tract of land called* . . . . . .

The defendant admits that his certificate comprehends part of the caveator's patented tract called " Grubby thicket." This being the case there can be no dispute in *this office ;* it being an invariable rule that so long as a patent remains in force, no part of the land therein contained shall designedly be patented to another person.

The caveat is admitted and ruled good, and if the defendant thinks proper, he may have an order for correcting his certificate, by excluding such part thereof as is contained in the aforesaid tract of land called Grubby Thicket.

December 8th, 1797.

ANDREW, ISSACHAR, and MAHLON SCHOLFIELD *agst.* THOMAS BEALL of George. — *In the Land-office, Dec.* 23, 1797.

Two certificates belonging to the defendant are caveated, viz. Prospect Valley, and the resurvey on Prospect Valley, called Mount Vernon. The said resurvey, it seems, was made agreeably to the ancient practice of this office, which allows a person, before patent, to take a warrant of resurvey on a certificate on which no composition money remains due. The ground of the caveat is that Prospect Valley, by running across the " Great Fall branch" an elder tract, contains in truth two separate unconnected tracts, contrary to an established rule. There is no doubt that Prospect Valley is, or

this account, erroneous, and a patent cannot issue for it as it now stands. So far the caveators succeed. But then, they insist that in correcting the certificate the place of beginning must be retained, and, of course, no land shall be retained except about three acres lying on the north side of the aforesaid Great Fall branch that is, the defendant shall have only about three acres of his original tract and the first vacancy thereto added by the resurvey containing three acres more, although it is manifest from the evidence that the main intent of the resurvey was to take the other vacancies, containing 62¾ acres in addition to the original, which contained 78 acres.

Should the caveators succeed in consequence of the rigorous observance of a rule, the result will be this; the defendant will loose about 125 acres for which he has paid and to which at the time of the survey, the caveators had no pretension whatever, and which the said defendant at the same time might have secured by making two surveys instead of one, provided he had known of the interference and situation of the Great Fall branch, which as appears from the evidence was unknown at that time. Such a result assuredly would not be considered to be consistent with the principles of equity, on which the chancellor is directed to decide all disputes in this office. But the truth is, that no such rule was ever established or even laid down confining the party to his first place of beginning and thereby depriving him of that, which was manifestly the object of his surveys; and the true rule dictated by common sense, is that where a man has in one survey included two distinct unconnected tracts, both of which were equally liable to his warrant, and at the time of the survey not located or affected by the warrant of any other person, the party shall take his election.

In the present case the party elects to take the land lying to the southward of the said Great Fall branch, and it is thereupon adjudged and ordered, that the caveat be and it is hereby ruled good, and that the certificate of Prospect Valley and the certificate of the resurvey thereon called Mount Vernon, be corrected by excluding such part thereof as lies on the north side of the Great Fall branch, and that the surveyor of Montgomery county make the said correction, and return the corrected certificate along with the originals to this office.

THOMAS C. WILCOXEN *agt.* THOMAS EDMUNDSON, jun. } *Caveat in the Land-office; Dec.* 9, 1802.

This appears to the chancellor an important case, on account of the principles on which it is to be decided. It is

the first case of the kind which has occurred under the present government. The defendant by virtue of a common warrant, has had three pieces of vacant uncultivated land included in a certificate of survey. It is on this ground, that he is caveated; the caveator having, since the defendant's compounding on his certificate, taken out a special warrant, and returned a certificate for the said land.

The defendant's counsel admits that, as the certificate is caveated, he cannot have a patent for the three pieces of vacant land: but contends that the certificate ought to be corrected, by excluding the said three pieces, in the same manner as, where the surveyor has run into an elder tract, the certificate is corrected by excluding that part which is contained in the elder tract. The chancellor conceives a wide difference between the cases: whether or not the certificate contains land comprehended in an elder survey, is *generally*, if not always, a matter of doubt. If a certificate should, on account of running into an elder survey, be deemed void, no man would risk the validity of his certificate by taking in land alledged to be comprehended in an elder grant or certificate; and the state might be deprived of the benefit of granting many acres of land which, on a fair enquiry, would be found vacant. But whether or not land is improved or cultivated is known to every person from the information of his sight.

It is said, that the chancellor, in the land office, is to decide on the principles established in the court of chancery. I give this position its utmost force. In chancery, fraud is discouraged to that degree, that, almost in every case, the least ingredient of fraud vitiates all the proceedings in which it is discovered. Is it not a fraud *knowingly* to return under a common warrant vacant cultivated land, and, before the survey, to remove from the land fence rails, which are considered as improvements? Certainly it is.—Well,—but the case of Coale and Garretson, in the court of appeals, is cited. It was the case of a man, viz. of Garretson, obtaining a grant for two separate pieces of land, comprehended in one survey: the circumstance not appearing on the face of the certificate and plat, because part of an old patented tract, which separated the pieces, was contained in the survey, and was not laid down. Garretson having obtained a grant, it is said, the court of appeals determined that he had an equitable as well as legal title. What is that to the present case, when the question is, whether or not the defendant is entitled to a grant under the rules of the land office? There is a wide difference between undoing that which is done, and preventing a thing from being done:—In short, the chancellor conceives the case of Cole and Garretson, even if accurately stated, cannot affect

the present case. Were it to govern the present case, why did not the counsel contend that, as the defendant had paid caution money for the whole, he should have the whole land, instead of having all which is left after excluding the three pieces?

That clause of the act of Nov. 1781, for opening the land office, which speaks of the chancellor's jurisdiction, is of great importance. As to former certificates and grants the chancellor shall determine according to the former rules and orders: As to future certificates and grants, the chancellor shall determine according to the rules and orders to be established by the governor and the council.

The governor and council, it seems, have laid down no rule applicable to the present case. Is then the old rule, or the dictate of equity to govern? Take either, and it will be found against the defendant. Under the old government, a certificate made out under a common warrant, containing improved cultivated land, was on caveat held void. The dictate of equity, or the general rule of chancery, is that fraud vitiates every thing in which it is found. Let us now consider the case on analogy. Rules, orders, or instructions, direct the surveyor to return an account of improvements.

Before a late act of assembly, the omission of improvements did, on caveat, invariably defeat a certificate, even where a part of the improvements had been returned. Why not say, "let the surveyor correct the certificate by inserting the improvements?" The truth is, that unless a plain intentional violation of a rule or order shall vitiate a certificate, fraud will constantly be practised, to the injury of the state. What right has the party to complain when he acts with his eyes open? Say, that it is the surveyor's fault: This is not likely: But if it be actually the case, the party, viewing the certificate before it is returned, might require the surveyor to correct the error before the return. The party may recover damages against the surveyor, who injures him by violating his own duty. But suppose 100 acres of improved land surveyed by the surveyor under a common warrant, for A B, without his instructions or knowledge.—The certificate is caveated: Shall A B have the land, merely because the surveyor has acted without his instructions? No! he shall not have the land, because it was not liable to be taken, without a special warrant. As to the case of *part* cultivated and part otherwise, the chancellor has already made remarks.

In conformity to ancient rule and practice, in compliance with the established principles of chancery, and in violation of no rule or right, as the chancellor conceives; it is adjudged and ordered, that the caveat of Thomas C. Wilcoxen against Thomas Edmondson be, and it is hereby, ruled good;

and that no patent issue on the said Edmonson's certificate of Edmondson's beginning; but that each party pay his own costs.

N. B. The certificates contain about 61 acres. There are three pieces of improved land, said in the whole to be about 10 acres. How strange it would be to correct the certificate by excluding the three pieces! Whom would it suit to take them? Would an individual sell lands in such a way? &c. &c. &c.

JOHN MOALE
vs
JAMES CROXALL } *In the Land-office, July 15th* 1805.

The chancellor has considered this case deliberately, and at length hath fully satisfied himself.

In cases arising on the 12th clause of the act of November 1781, ch. 20, it was the practice or rule of the chancellor's predecessor to dismiss the caveat, suffer the defendant to take a patent, and leave the parties to contend before a jury, unless he was perfectly satisfied that the caveat was well grounded, that is to say, that the land attempted to be taken up as vacancy was originally comprended in an elder tract, and now left out by the variation of the compass. This practice appeared to the chancellor perfectly right, and therefore he has invariably pursued it. The present case however differs from any that has come before him under the said act. It is probable, from a view of the plats, that the several tracts, between which the vacancies are supposed to exist, and which were taken up at different times, cannot, on account of their different dates, be now run, either with or without allowances of variation, so as not either to interfere with each other, or to leave some very trifling opening between them, of the breadth of a few feet, or yards. No rule has ever yet been established by which variation has been ascertained and allowed. It is true, that commissioners and even some juries have allowed for a variation of one degree for 20 years. But the chancellor has never understood that any rule whatever has been fully *established* in the general court. When on proof of the original or former running of one line, the other lines are corrected so as to vary from the present running 1, 2, 3, or more degrees, this cannot properly be called an allowance, by rule, for the variation of the compass. It is in fact only allowing the proof of actual running to prevail. For if the first line of a tract appears at this day to be 3 degrees different from what it was at the original running, 50, 60 or 70

years ago, it is plain, that every other line must have varied just as much.

For instance, the 1st line of Black acre, patented 40 years ago, is due north 100 ps ; there is evidence that at the original running, the line ended at a certain spot. It is now run, and by going to that spot, it turns out to be N 2 ds. W. Is it not plain, that the 2d line which was W must be W 2 ds. S? &c. &c. &c.

In the present case the defendant has taken up all his 3 vacancies on arbitary allowances for variations, in one instance of 3 in another of 2 degrees &c. &c. Commissioners indeed are stated to have made some of these allowances ; but it does not appear, that their work is established.

Another consideration which the chancellor thinks entitled to weight is this ; the vacancies returned are so inconsiderable, so narrow, and of such questionable shape, and lying between patented tracts which evidently must have been intended to touch each other, that every disinterested man, on viewing *them*, and the said old tracts as delineated, would exclaim " it is impossible that when the said tracts were taken up those vacancies could exist."

It is a maxim, that " *de minimis non curat lex.*" i. e. the law pays no regard to the least things, or things of no moment. One meaning of this maxim is, certainly, that judges ought not to encourage controversies concerning things of no more value than just to afford a party a ground for a law suit. From allowing the defendant to take a patent the result would be this : He might institute an ejectment against the caveator, or the latter might sue the defendant.

The amount of the 3 distinct vacancies is only $10\frac{5}{8}$ths acres ! The party entitled must either give up his right or expend more than its value. What must the loser expend? But the consideration, alone, of the defendant's returning those vacancies on an arbitrary, unfounded, variation of the elder tracts, and the first beginning at the end of a line laid down according to that variation, and of the other two vacancies beginning at ends or parts of lines adopted by commissioners, whose works do not appear to be conclusive ; this alone might be deemed sufficient. But when all the considerations are combined, the chancellor cannot, without betraying his sacred trust, do otherwise than rule the caveat good : And by ruling the caveat good he conceives that he does not violate the principles of any decision made by himself or his predecessor, or by the old judges of the land office. He conceives, too, that his decision will be deemed to have a powerful tendency to quiet possessions, and prevent law suits ; and that

there cannot be more than one class, order, or set of men, by whom it will be disapproved.

It is thereupon adjudged, ordered and decreed, that the caveat of John Moale against James Croxall's certificate of the tract or three tracts of land called "Retaliation" be, and it is hereby, declared to be good—But no costs are allowed.

The remaining Decrees are by the present Chancellor.

NEHEMIAH HALL
a
The representatives of MICHAEL PUE deceas'd

Land-office.
Caveat; 2nd April 1806.

In this case an order had passed for subpœnas, returnable to this day, dated the 27th of November 1805. The caveat was entered on the 18th of the same month.

The caveator appeared, and produced an affidavit, proving the service of the subpœnas on the persons named in the aforesaid order, by delivery;—and, the loss of the copies which he had retained;—and, also, the declaration of those persons that they would not attend.—The caveator produced the said affidavit also to prove that he served the said persons with notice from the surveyor of Baltimore county of the day he should attend to make the survey, agreeably to the order from the land office; which notice is thereto annexed.

By the plat returned, and by the patents produced, it appears that the vacancy returned by the certificate of Doctor Pue (49 acres) which is the subject of the present caveat, is included in the land patented to the caveator, which, by the established rules of the office, it is believed, is sufficient, on caveat, to prevent a patent issuing, while another for the same land remain unvacated.—The rights of the parties might have been tried on caveats to the certificates on which the patents of Nehemiah Hall have been obtained—the caveat is therefore ruled good, as to the said 49 acres, to include which it is understood the patent was desired:—The parties respectively to pay their own costs.

W. KILTY, Chan'r.

THOMAS RICHARDSON
a
CHARLES RANDALL.

Land-office, June 7th, 1806.

The hearing of the caveat in this case having been continued to this day on the application of the caveator, the parties attended, and the proceedings in the case, the evidence

before taken, and the evidence taken since the continuance, were read and considered, and the observations of the parties thereon heard.

The caveat is entered by Richardson against the certificate of Randall, returned on a special warrant, the land included in which is claimed by the caveator under a warrant of resurvey, which was issued prior to the special warrant, and, of course, if Richardson should be entitled to a patent on the certificate returned on such warrant of resurvey, the caveat would be ruled good.

But it is alledged that Richardson had not at the date of the warrant of resurvey such a seizin of the contiguous land as would entitle him to the benefit of such warrant, and it appears clearly from the evidence, that whatever his equitable right or interest may have been, his legal title to the land accrued after the date of the warrant.

Considering the nature and grounds of a warrant of resurvey, and the established practice of the land office, the chancellor is of opinion that the bond of conveyance, and the other equitable circumstances adduced, were not sufficient to entitle Richardson to the warrant of resurvey taken out by him in this case, or that no right accrued to him thereby to the land in question; and the execution of the deed afterwards, (though, as stated by the caveators counsel, before the execution of either warrant) cannot better his title; more especially as it was improperly antedated.

The caveat of Thomas Richardson is therefore dismissed;—the costs to be paid by him:—and if Randall is otherwise entitled, by payment of the composition &c. there is nothing to prevent his obtaining a patent.

Considering the determination on this caveat to have the same effect as if on cross caveats, it follows that Richardson is not entitled to a patent for the said land.

MATTHIAS STEM *agt.* SAMUEL FARQUHAR, } *Caveat in the Land-office, June 24th*, 1805.

The caveat, in this case, is on the ground that a part of the land returned in the certificate, on the warrant of resurvey, is included in a tract of land called Harle valley, the property of the caveator.—This claim is endeavored to be supported by the plat, shewing the running of that tract by course and distance, for illustration, and by an allowance of $2\frac{1}{4}$ degrees for variation, which the caveator alledges is proved to correspond with the former location of the said land.

In the same tract is laid down an elder tract, called Kilfadda, shewing the lines by course and distance, and by an allowance of $2\frac{1}{2}$ degrees for variation, as run in 1768, in dividing that tract.

The depositions produced may be sufficient to satisfy the chancellor that, according to the division made in 1768, the locations now made by the caveator are correct; but it is the established rule and practice, that unless the caveator, who alledges that the land claimed is contained in his grant, can support his allegation beyond doubt, the matter shall be referred to a jury, by ordering a patent.

It is likewise a rule that the present runnings of courses may be corrected by actual proof of the original runnings, but not by an allowance for variation.

The legal effect of the several tracts having been held according to the division in 1768, and the true location of them to be deduced therefrom, and from other proofs, are considered proper subjects for a court and jury, and would not be in a situation to be contested if the caveat should be ruled good: the caveat is therefore overruled, and dismissed, but without costs.

D. West
vs.
J. Jarrett. } *Caveat in the Land-office, July 2d*, 1806.

This case was continued over to be heard on the first day of the present term (July 1) when the parties attended, and were heard, and the plats &c. considered.—The caveator alledges that a part of the land claimed by the defendant is comprehended in an elder survey, called "I dont know" returned in the certificate of Aquila Miles; which land was proclamated by the caveator since entering the caveat, to wit on the 19th of April 1806.

The chancellor is of opinion that David West has not by the said proclamation warrant acquired such a property or interest in the land called "I dont know" as to enable him to sustain a caveat against the granting of lands contained within its lines, or to avail himself thereof on this caveat. It appears that this defence has originated since the continuance, and the pretensions of the caveator have been since laid down accordingly.—This he had a right to do, under the continuance, but subject, of course, to a question as to the validity of his title, thus set up.—Independant of this ground, the chancellor is not satisfied by the plats for illustration that the land claimed by the defendant is comprehended in the caveator's pretensions, so as to prevent, according to the usual course of decisions, a patent from issuing. The caveat is

therefore dismissed, but without costs; no plats having been returned by the defendant.

ZACHARIAS
a } *Land-office, August 8th* 1806.
COVER

On the hearing of the caveat, a warrant of resurvey was produced by the caveator, which issued on the 9th of November 1805, which was after the survey on the certificate caveated; and it is alledged that, by allowing the variation, the vacancy taken by Cover's special warrant will be included in the tract of land called Neighbourly Kindness; but this is not sufficient to prevent a patent issuing, after which the effect of that variation may be determined at law—The certificate and plat of the tract called Neighbourly Kindness, resurveyed in 1770, is produced; but there is nothing to shew that the 3¼ acres of vacancy returned on Cover's special warrant is included in that or any elder survey. The caveator alledges that he had 5 acres due on a common warrant; but that cannot affect the present case.

The caveat is therefore dismissed with costs.

G. M'CAUSLAND
vs. } *Caveat in the Land-office, September* 18, 1806.
J. RUTLEDGE.

This case was set down to be heard on the 16th instant, and, in presence of the parties, was continued to the 17th, when it was argued by the counsel for the caveator and the defendant.

The ground of the caveat is that the land surveyed for the defendant includes or runs through a tract of land called Bishop's contrivance, deeded to the caveator, or that a part of the defendant's pretensions are included in that tract.—For the caveator it is also contended, in argument, that the interference with a tract of land before granted is sufficient to prevent the issuing of a patent, without shewing any interest in the caveator in such tract.

In support of the location, as made, on the plat for illustration, of Bishop's contrivance, the caveator has produced a certificate, purporting to be a copy from the books of James Calder, respecting a survey of land in the reserve of Baltimore county in 1771, by the name of Bishop's contrivance, and several depositions, some of which are referred to on the plat for illustration;—and has also produced a deed, executed by the chancellor, in June 1804, to the caveator, for a tract of

land called Bishop's contrivance, the courses of which correspond with those in the paper produced as signed by Calder, but in which boundaries are mentioned which are not contained in the said paper.

It is not necessary for the chancellor to express his opinion as to the question of interest in the caveator, as his case falls within other rules which are considered to be firmly established.

It is a rule to refer the parties to a jury trial in all cases where a caveat, instituted on the ground of interference with a patented tract, is not clearly and satisfactorily supported: the same rule, or nearly the same, has been laid down in other cases, as follows;—that unless the caveator who alledges that the land is contained in his grant can support his allegation beyond doubt the matter shall be referred to a jury;—and that inasmuch as the admission of the caveat puts an end to the pretensions of one party, and a dismission leaves both parties in a condition to have a fair and full trial by jury the caveat shall not be ruled good unless the chancellor shall be thoroughly satisfied that the land has been already patented.

It has also been the practice not to decide on litigated points of law, which after such decision might in any way come before the judges of law: and where, with respect to location, questions of law are blended with questions of fact, they are most proper to be decided by a court of law.

The chancellor is not satisfied that the land deeded to the caveator is properly located; or that a deed was the proper conveyance; or as to the evidence on which the location stated in the deed was founded;—or with the evidence produced to prove the running as contained in the deed.—There is no proof that the land, when sold by the intendant, was described by metes and bounds, and when the caveator produced his deed, it was incumbent upon him to be secure in the location expressed therein, because it might have been made certain, if it existed by a survey returned to the land office.

It is urged by the caveator that the location given to Bishop's contrivance by the defendant is fictitious, and fraudulent, as tending to evince a belief that there are two doubtful locations:—but, if so intended, it could not answer the purpose, as no evidence is produced in support of it, and if the defendant is right in his objections, it could not have been located with certainty by him.

It appears to be used merely as a counter-location, to put the caveator upon the proof of his; though the necessity of it, in that view, may at least be doubtful, as it has been considered as a principle established that, in a caveat, the defendant must succeed of course unless affirmative evidence is produced by the caveator.

The injury which the caveator alledges may be done to him by the patent, if granted in this case, by preventing his obtaining a patent on his special warrant, does not require consideration; the warrant being subsequent in date, and the caveator having had it in his power to apply for it before.

For the reasons above stated, the chancellor is of opinion that the caveat in this case ought not to be ruled good, and it is accordingly adjudged, ordered, and decreed, that the said caveat be dismissed, but each party to pay his own costs.

LANCELOT WARFIELD
vs } *Caveat in the Land-office.*
JOHN MERRIKIN.

After hearing on the 12th, the arguments of the counsel on this caveat, and examining the plat, the depositions, and the other papers referred to, the chancellor has in the first place considered how far this case is brought within the rule adopted by the judges of the land office, which has been that, unless the caveator could support his allegation beyond a doubt, the matter should be referred to a jury.—The reason given for this rule has been that an admission of the caveat puts an end to the pretensions of one party, and a dismission leaves both parties in a condition to have a full and fair trial:—But, this principle does not prevent the ruling a caveat good, where the certificate returned, and other circumstances, shew that the defendant's location is not a just one, so as to shew any vacancy.

The location made by the defendant, of the tract called Scotland, is grounded on the finding of the jury, in 1700;—and the caveator is willing also to rely on that finding, but contends that it should be located without the allowance for variation, and by regarding the expressions;—and it is admitted that the question shall be considered as if the finding of the jury was located by the caveator as he contends it should be.

It would be extending the rule abovementioned to a dangerous length to say that every location set up by a person claiming land as vacancy should create a doubtful question, proper to be left to a jury,—and that the judge of the land office should not judge of a location made contrary to other long established rules;—and there is no rule more certain than that a boundary, or other call, is to be gratified, and that the course and distance, in such case, is to be disregarded.

The patent for the tract called Scotland mentions three boundaries, which are marked on the plat A, B, & C; and the lines on which they are placed correspond with those laid down by the defendant, from C to B, & to A. The patent

then describes the land as " bounding on the east by the land " lately possessed by Robert Short, and with the said bay, un- " to the said Fishing creek ;—on the south with the said creek " and with the land of Oliver Spry planter—on the west with " the creek called Scotcher's creek :"—We find then, that after the third boundary, by the great marsh at C, no course or distance is expressed, but the land is bounded by other tracts, by the bay, and by the two creeks.

It was not the object of the act of 1699 to empower the jury to resurvey land contrary to its bounds, artificial or natural ;—and the jury, in this case, have certified that they have laid out the said land according to its true ancient metes and bounds ; although, whatever their reason may have been, they begin at what appears from the courses of the patent to have been the third boundary, to wit, at C :—When they get to the third boundary, (which is the first in the patent, to wit, A,) they then describe the land as bounding on Scotcher's creek, the land of Oliver Spry, Fishing creek, and the bay, as by the patent directed, omitting only the call to bind on the land of Robert Short ; and after this general description, which refers to the patent, they go back to the boundary last named by them at the head of Scotcher's creek, A ;—and describe the courses and distances round to C, the beginning ; though they appear also to have mentioned, at the termination of the 39th line, a locust post, which is not called for by the patent, or to have made some mistake respecting it, which might perhaps have been explained if they had returned a plat with their certificate, as the act of 1699 directed:—But the result of their finding is, that in running round from Scotcher's creek to what they made the beginning,—to wit, from A to C, and binding on the lands, creeks, and bay, as called for by the patent, they run the several courses and distances which they have expressed, and the question then is whether those bounds are to be controuled by the course and distance, or the course and distance run by them to be disregarded.

The defendant has located the land from A with an allowance of $5\frac{1}{4}$ degrees for variation, and the effect of it is to make the lines distant from Scotcher's creek, from the land of Oliver Spry, or of any other person on the south,—from Fishing creek, and from the bay :—But it is a rule in the land office not to make any allowance either for or against a patentee on the variation of the compass alone ; although, on proof of the original running of some of the lines, the allowance for others might be fixed in cases where it might be necessary from the party being confined to course and distance,

It appears also that, in favour of a patentee, the chancellor may correct the present running (occasioned by varia-

tion) by proof of the original running, and the act of November 1781 ch. 20, §. 12, directs that no patent shall issue for land which in the opinion of the chancellor may have been thrown out of the lines of a grant by the variation of the compass.

It was contended by the defendant's counsel that there was no proof of the land of Oliver Spry:—but it appears clearly that the tract called Scotland was to run with the land of Spry, wherever it lay, from Fishing creek to Scotcher's creek, and therefore there can be no vacancy to the south, between the line of Scotland (from one of the creeks to the other) and Spry's land;—and if there is any vacancy on that point, it must be to the south of the land that was Spry's.

On the whole the chancellor is satisfied from all the circumstances above stated that the location made by the defendant is not a just one, so as to shew any vacancy; and that the location made by the caveator, of the tract called Scotland, is sufficiently established by the calls, and the proof, to shew that the defendant's pretensions are within the lines of that tract, (the interest of the caveator in which has not been disputed); and he considers that it is not necessary or proper to send the parties to a jury, by ordering a patent for vacancy thus endeavoured to be shewn. It is therefore, this 14th day of January, 1807, adjudged, ordered, and decreed, that the caveat of Lancelot Warfield in this case be ruled good, and that the defendant John Merrikin pay the costs.

CHAPTER X.

INSTRUCTIONS TO SURVEYORS, AND TO REGISTERS OF THE LAND-OFFICE; ORDERS RELATING TO CAVEATS; &c.

I PROPOSE now, after a few previous remarks, to insert such instructions as have been issued by the governor and council for the direction of the officers concerned in the land office establishment; and also those orders which the chancellor has considered it within his province to prescribe relative to the entry and continuance of caveats. By what has been heretofore said concerning the powers of the judges of the land office it will be perceived that I do not consider them as possessing authority to institute rules, in general, for the government of the office. The registers are not personally under the direction of the judges, but under that of the

executive. They are officers charged and entrusted, *directly*, under the constitution and laws, with the care and administration of the land office, and the authority of the judges operates only upon cases in which there is, or may be, some dispute. In cases of actual dispute, the matter always comes before the judge in the form of a caveat, for every such dispute issues in the question whether a certificate, lying in the office, shall be admitted to patent or not. Where a case is merely doubtful in itself, or requires to be settled by the application of rules of law before it is acted upon in the office, the matter is presented to the judge by a petition: his order is given on the particular case, and the proceeding is conformable to it. I have however observed, in a former place, that the power of the judges may be construed to reach to any matter *requiring* a special direction, as not being embraced by any general instructions or rules, established by rightful authority. Among these, the late chancellor has considered the right and the mode of entering caveats, and has regulated them accordingly by *orders*, which, though not formally recorded, are minuted among the proceedings on caveat; are put up in the office for general information, and are there observed and obeyed. I presume that these orders, although they relate to caveats, which, from the moment of their being entered, are unquestionably under the sole direction of the judges, until finally disposed of, might be overruled by instructions from the executive: but it would be needless; as the judge, if he could not prevent the entry of a caveat, on an irregular application, might at least, dismiss such caveat immediately after it was entered; and it is, upon the whole, reasonable that the judge should regulate every thing that has relation to caveats. These remarks are made to explain the appearance of the two orders concerning the entry of caveats. They will be accompanied by some orders of a general nature respecting the *continuance* of caveats, which is a matter undoubtedly under the direction of the judges. These orders have spent their operation, but will serve as a specimen, to shew what may be done under special and extraordinary circumstances. As to particular orders, they are too numerous even to have admitted of a full examination. A selection of them would undoubtedly have been useful towards explaining the course of proceeding in trials in the land office; but the difficulty of making them intelligible when taken out of their places, and the impossibility of exhibiting any important case with all its attendant orders, returns, proofs, &c. have prevented me from publishing any thing but the final decrees, or rather a part of them, and the few orders abovementioned. An order of the governor and council, respecting location in special warrants, which will also appear at the end of this

small collection, I shall have occasion to remark upon in my concluding chapter, and shall therefore say nothing concerning it here; and, for the same reason, I shall pospone any observations on the instructions to surveyors, which follow here in the order of their dates.

RULES AND ORDERS

For the direction of surveyors in their office; established by the governor and council the 15th day of April 1782.

Upon receipt of these Rules your are take the oaths, (or affirmations) to the government, if you have not already taken them; and you are also to take and subscribe the following oath or affirmation of office; to wit, I do swear or affirm that I will well and diligently, truly and faithfully, discharge and execute the trust reposed in me, and the duties of my office, as surveyor of county, to the best of my knowledge and power, without favour, affection, or partiality, according to law; and that I will, in all certificates for escheat or cultivated lands returned by me, express the real value in current money, of the escheat lands, and the improvements thereon, and the real value in current money of all improvements on cultivated lands: *that I will not mention any boundary (artificial or natural,) in any certificate of survey, unless I do actually run and measure the distance to such boundary, and that every boundary by me inserted shall be at the end of the line as expressed;* and that no certificate shall contain more land than I shall certify, to the best of my knowledge and belief:—and you are to return a certificate, by the justice, of such your qualification, to this board, as soon as may be thereafter.

2d. Upon receipt of any common warrant you are to note down in a book, to be kept by you for that purpose, the time of your receiving it, the quantity of acres included therein, the date thereof, and at what place the person who obtains it locates the same; and when any person desires to locate a warrant on land which some other person has already entered a warrant to affect, you shall, if required, produce your book of entries, and shew him that entry or location, if such demand be made at your home, or at any other place where your book of entries shall be.

3d. Your are upon all surveys and resurveys to describe your beginning as well and as full as the thing will admit of, and then, only course and distance, to the last course, which is always to be thus expressed;—"then with a straight line to the first beginning;" unless where you mention any boundary, natural or artificial, in which case you are actually to

run and measure the distance to such boundary, which shall be at the end of the line; nor are you to return to the land office any platt or certificate for land of which either you or your assistant have not actually measured every line.

4th. You are by no means to survey, or return a certificate for, a greater number of acres than are expressed in your warrant, unless to include the whole of such vacancy as shall lie between any two or more tracts of land; giving this as a reason for having exceeded the quantity mentioned in your warrant.

5th. As soon as you execute any warrant, or any part thereof, you are to endorse on the back of your warrant that it is executed, or that such part thereof (which you must specify) is executed: you are also to endorse the name or names of the land to which the warrant is applied, and sign the same endorsement.

6th. If any person assigns a warrant, or any part thereof, you are to note it down on the back, and also before you execute any warrant or lay out any land by virtue of any assignment, you are to have an original assignment on a separate paper, to be by you returned to the land office with your certificate of such survey.

7th. You are to make all your surveys as regular and square as you possibly can, and by no means unite one bit or spot to another by a string or line, and, when it can be done, you are always to make the line or lines of one tract the line or lines of another, that no small parcel or spots of vacant land may be left out.

8th. You are not to execute any warrant after it is out of date, and whereas it is said to have been a frequent practice for persons having warrants to carry surveyors to execute the same, and then, after they have run a line or two, to break off, on pretence of wanting better information concerning the the bounds of adjacent tracts, and by this means let such warrants run out of date, and afterwards complete such survey and return a certificate thereof before the one year expires;—You are to observe that such beginning to run or execute a warrant is to be deemed a nullity, provided such warrant actually run out of date before the survey shall be completed and the certificate returned—according to the obvious construction of such warrants, and give preference to any subsequent warrant which shall come to your hands to affect such land agreeable to your preceding direction.

9th. Whereas resurveys are often made to leave out land that is suggested to be within elder surveys, and great abuses have been committed by turning out indifferent land although it lay not in elder surveys or prior patented tracts, and taking in good land in lieu thereof, you are when a warrant for making such resurvey is hereafter brought to you, first to re-su-

vey according to its ancient metes and bounds the more ancient tract in which part of the tract that you are required by the warrant put into your hands to resurvey shall be said to be included, and in your certificate you are to insert the name of such more ancient tract, the name of the patentee thereof, and the time when it was taken up ; after which you are to survey the tract for resurveying which the warrant shall have been granted. This mode of proceeding will enable you to discover certainly whether any, and what part, of the younger tract is included and taken away by the elder survey, and you are always by proper words to denote and distinguish the same in your platt and in your certificate, after alledging that you have surveyed the several tracts separately according to their ancient metes and bounds, beginning with the most ancient and that you have added acres of vacant land (in case any vacancy be added) by virtue of the before mentioned warrant of resurvey : you are then to describe or give the lines of such resurvey, which you are by the warrant directed to make, and for which patent is to be issued ; saying, " Lastly beginning for the out lines of the resurvey by virtue of the before mentioned warrant &c ;" and at the bottom of your certificate you are to give tables of courses, referring by figures to the platt, viz. the courses of the more ancient tract or tracts into which it is alledged that such younger survey to be resurveyed does run ; the courses of the former survey now to be resurveyed ; the courses of the vacancy or vacancies added, and lastly, the courses of the resurvey, or land, for which patent is now to issue ; and when you rectify any error in such former survey now to be resurveyed and patented, you are in your certificate to note and mention *what* the error was, to *what* it was owing, and how you have amended the same ; and where there shall be any surplusage, or deficiency, discovered on a resurvey, you are to mention in your certificate *what* such surplusage or deficiency is, and *how* you apprehend such surplusage or deficiency happened.

10th. You are when ordered to resurvey two or more tracts into one, they being contiguous to each other, *first* to resurvey them severally, according to their respective ancient metes and bounds, and you are to insert in the platt, as well as in your certificate, their original *names*, and *quantity* of acres within their respective lines, and in your certificate say, " lastly beginning for the out lines of the resurvey made by virtue of the before mentioned warrant, &c." and give the courses thereof.

11th. In resurveying any escheat land you are to lay it down according to its ancient metes and bounds : If the party be not satisfied therewith, the land must lie for any other who will take it on those terms.

12th. In every certificate of escheat you must be very particular as to the number of acres, kind, quality, and value of the land, and the improvements thereon, and whereever there are any improvements on cultivated lands, you must mention the same in the certificate, the nature, kind, quality, and value thereof, according to the directions in your oath of office. If it should be alledged that part of any escheat land is comprehended within the bounds of an elder survey, you are to pursue the method prescribed in the ninth rule to ascertain what part, if any, lies within such survey.

13th. Where a party applying for a resurvey shall be possessed in fee of part of a tract only, on his producing an attested copy from the land office of the courses and distances of such original tract of which the land you are required to resurvey shall be said to be part, you are to follow (as occasion be,) the directions already given in the 9th 10th and 12th articles of these instructions, with this difference that where they direct the resurveying the original tract according to its ancient metes and bounds, you are in this case to resurvey no more of the original tract than such a part of it as the warrant put into your hands shall direct, with a line or lines from the first or other certain boundary of the said original tract, so as to ascertain that the quantity thus claimed doth really lie within the bounds of the tract of which it is said to be part, and in your certificate, after alledging that you have run such line or lines from the first, or other certain, boundary of such original tract, mentioning the tract of such boundary, and the patentee thereof, you are to declare that the whole quantity so claimed, or such part of it (mentioning the quantity) now returned by you, doth lie within the bounds of the said original tract. When in your certificate you are to describe the out lines of the resurvey for which patent is to be issued, say "beginning" or "lastly beginning," as the case may be, "for the out lines of the resurvey by virtue of the before mentioned warrant, at the end of perches and links in the line (or course) of ." With regard to all other particulars you are to observe the directions given you by these instructions.

14th. You are, when directed to include vacancy, to take in the whole, except the quantity be more than the party chuses to take up; in which case the remainder is not to be less than one hundred acres, and that to be left in a body entire, for you are by no means to leave small parcels, in slips or otherwise, nor are you to run into any elder survey, or run a *string* or *line* across any surveyed land whatever, although it should belong to the person obtaining the warrant of resurvey, in order to include vacancy; but such vacancy shall be taken up by common or special warrant as the case may require, unless

the party resurveys the tract or tracts (being his own) to which it is adjoining, being in one or more parcels. In your certificate, immediately before you begin to describe the out lines of the resurvey for which patent is to be issued, you are to insert the quantity of vacant land so taken up on the platt to be returned with the certificate; when vacancy shall be added you are to insert the words "vacancy" acres:" If it be in more parcels than one then, in each of the said parcels insert "1st. 2d. 3d. vacancy acres": also in your platt, on the outside of the lines of each vacancy you are to insert the names of the lands, or of the owners of the several tracts surrounding it. At the bottom of your certificate you are to give tables of courses referring by figures to the platt, as before directed.

15th. You are upon discovery of any land forfeited to the state for treason, or lately the property of any British subject, to give notice thereof to this board or the intendant.

16th. In resurveying *old* tracts, whereof part may be found to lie in the water, you are to be careful in certifying whether it is likely to have been washed away or to have been an error in the original survey.

17th. You are at all times to give the strictest attention to the directions contained in the respective warrants issued to you out of the land office, paying a due regard however to these rules.

18th. You shall endeavour to discover whether any person or persons are in the possession of, or occupy, lands in any part of the county of which you are surveyor that doth not pay assessment for the same, or others not having procured patent from the land office, and in case you make any such discovery you are to advise this board and the commissioners of the tax of your county.

19th. You are not, after the receipt of these instructions, to suffer any person to run out the lines of or execute any warrant for you unless an assistant properly qualified; and to prevent all disputes about the priority of entries or locations of land, no assistant shall presume to receive or enter the location of any warrant whatsoever, that power being solely vested in the surveyor; nor shall you appoint any assistant till he shall be approved of by the examiner general; and, when you apply for such approbation, you are to set forth the reasons that induce you to make such application, and after your assistant (being approved of by the examiner general) shall have entered into bond, with two sufficient sureties, to you, your heirs and executors, for the true and faithful execution of his trust or employment, and shall have qualified in the same manner as you are directed by our first rule, you are forthwith to return a certificate of such his qua-

lification to the examiner general, whose approbation, or permission, shall be expressed or recited in the order or appointment which you make, and deliver to your assistant, and you are also to give him a copy of these your instructions and rules.

20th. In case you should afterwards dismiss your assistant you are to give notice thereof to the examiner general, with your reasons for so doing,

You must in all things relating to your office observe and be governed by the directions of the act entitled "an act to "appropriate certain lands to the use of the officers and sol-"diers of this state, and for the sale of vacant lands".

Given in council, at Annapolis, this 15th day of April, in the year of our Lord 1782, and in the 6th year of our Independence.

[CIRCULAR.]

In Council, 2d July, 1782.

SIR,

You are hereby instructed not to run the lines of any common warrant, special warrant, or warrant of resurvey already issued, or which hereafter may issue, out of the land office for common vacancy, into the manors, or lands heretofore reserved for the use of the late lord proprietary, lying adjacent to such manors, or which may have been otherwise reserved for the use of the said proprietary, or which may have been heretofore set apart for the use of the Nanticoke Indians.

To the several Surveyors.

[CIRCULAR.]

In Council, 21st Sept. 1782.

SIR,

Although, by the act of the last session, upon which our instructions were founded, no manor, or reserved lands, can be affected by a common or special warrant, or warrant of resurvey; yet the surveyor is not restrained from running the lines of any tract of land into manors or reserved lands pursuant to a warrant of resurvey obtained for the purpose of satisfying the chancellor that *that* land which may now appear to be vacancy, owing to the variation of the compass, was included within the original grant upon which the warrant of resurvey issued. We therefore direct you to run into any manors or reserved lands where it is necessary for the above purpose.

To the Surveyors in the several counties.

[CIRCULAR.]

In Council, 16*th March*, 1786.

SIR,

In addition to the instructions heretofore given you, we hereby order and direct that you observe the following:—

"Ordered that the several surveyors shall and may, hereafter, in executing any warrant of resurvey, or escheat warrant, not only survey the land therein mentioned according to the ancient metes and bounds, in the usual manner, but also at the request of the party, lay down and survey the said land as the said party shall direct, and return a certificate of the different surveys."

We are sir,

Your most obedient servants,

W. SMALLWOOD.

To the Surveyors of the several counties in the State.

In Council, *Annapolis September* 15, 1796.

SIR,

In addition to, and explanation of the rules and orders for the direction of surveyors in their office, heretofore established, we have this day determined on the following, viz.

Whereas by an act of assembly, passed at November session seventeen hundred and ninety-five, entitled "an act relative to the proceedings in the court of chancery, and in "the land office," it is directed, that no certificates for land, made, or thereafter to be made, shall be received into the land office, unless passed by the examiner general, and returned to the said office before the first of July (then next) or within eighteen months from the date of the warrant: ORDERED, that whenever a warrant has been executed, and it appears that the certificate thereon has not been returned into the land office, agreeably to the said law, and within the term of eighteen months from the date of the warrant, you will consider the said warrant and certificate as void, and not constituting an elder survey, so as to prevent the execution of any primitive warrant to affect the said land.

We are, &c.

J. H. STONE.

To the several Surveyors.

In the Land-office, *May the* 18*th* 1797.

Whereas it appears to have been a practice for one man to enter a caveat in the name of another, without any authority

for so doing, to the great vexation of the proprietors of certificates, and the delay of justice; It is Ordered that hereafter no caveat be entered in this office, unless by the verbal or written directions of the party in whose name it is required to be entered, or of his, or her attorney or agent, appearing to be authorised by writing under his or her hand and seal, and in case the hand writing of the party be not known to the register, his or her written directions must be attested.

A. C. HANSON, *Chancellor.*

A further order on this subject forward

In the Land-office, January 1st, 1800.

Whereas it is represented to the chancellor that caveators have taken the opinion of eminent counsel on the 11th section of "an act relative to proceedings in the court of chancery, &c." passed at the session of November 1797, and the said counsel have so construed the said section that none of the caveats instituted before the passage of the said act should be discontinued after January 1800 for want of prosecution, unless application had been made to the chancellor to bring the same to issue: and, whereas the said construction appears to the chancellor to be contrary to the plain meaning of the said section, and to the object of the said act, to prevent any inconvenience or injustice which might otherwise result from the mistakes of caveators, relying on the said erroneous construction;

It is, by the chancellor, adjudged and ordered, that every caveat standing in this office, which was entered before the 21st day of January 1798, which was the time of passing the said act, under the special circumstances herein before stated, viz. under the misapprehension occasioned by the said opinion, be, and it is, hereby continued until the first day of May next, or until some further order, to be passed before the said first day of May.

A. C. HANSON, *Chancellor.*

In the Land-office, April 29th, 1800.

The chancellor being convinced that the time limited by his general order of the 1st day of January last, for the continuance of caveats entered before the 21st of January 1798, is too short to prevent the inconvenience or injustice which may, without further time allowed, result from the mistakes of caveators, relying on the erroneous construction of law mentioned in the said order;

It is by the chancellor adjudged and ordered that every caveat standing in this office, which was entered before the 21st day of January 1798 be, and it is hereby continued until

the 2nd Monday in November next, or until some further order, to be passed, or decision to be made, before the said 2nd Monday of November next.

A. C. HANSON, *Chancellor.*

In the Land-office, October 25th, 1800.

The law limiting the continuance of caveats having made no provision for cases in which the caveator shall die before the decision of the caveat;

It is, on consideration of the special circumstances, viz. the death of caveators, adjudged and ordered, that all caveats entered by persons who have died since entering the said caveats, and which have not expired by the operation of the act of 1797, be, and are hereby continued until the 2nd Monday in May next, or until further order; provided the death of a caveator be known or announced to this office before a due application for a patent on the certificate caveated.

A. C. HANSON, *Chancellor.*

In the Land-office, December 4th, 1801.

Ordered, that hereafter, notwithstanding the order of May 18th, 1797, any person admitted as an attorney in any court of law, or equity, may direct a caveat in the name of any person whatever to be here entered against any certificate of survey or resurvey which, agreeably to the rules and practice of this office, or any order of the chancellor, is liable to a caveat; and a caveat shall be entered agreeably to such order;—provided that the said direction be given in writing, stating that it is given by the said attorney at the request of the caveator.

A. C. HANSON, *Chancellor.*

In the Land-office, October 31: 1803.

Under the special circumstance of the death of the late register, and the **want* of a successor, it is adjudged and ordered that all caveats in this office instituted, which were to expire at any time between the 21st inst. and the 10th of November next, be and are hereby declared to be continued in force until the 1st day of January next, or until further order.

A. C. HANSON, *Chancellor.*

* I have been surprised in transcribing this order to observe, for the first time, the word above in italics; for a successor was appointed and qualified on the 28th. The order I presume was written before the appointment, and dated after the office was opened, without due attention to its contents.

In Council, Annapolis July 31, 1805.

Ordered, that the registers of the land office be, and they are hereby directed and instructed, not to issue any special warrant that shall contain more than one location.

By order,

NINIAN PINCKNEY, *Clerk.*

CHAPTER XI.

TESTIMONIES CONCERNING THE LAW AND PRACTICE OF THE LAND OFFICE.

AS actions of ejectment, in the courts of law, always involve questions concerning original titles, and as these neces sarily produce enquiries relative to the validity of the proceedings by which such titles were obtained, the rules and practice of the land office of course come into discussion; and, as they have not always been susceptible of proof by reference to written authorities, it has frequently happened that persons concerned in the management of that office have been called upon to give oral and public evidence on the subject. This has taken place perhaps in many instances of which I am not informed. I was in search of cases of the kind, when my attention was directed to an instance so remarkable and important as to arrest my enquiry, and fix it on that particular case. I found that the late chancellor, and the late register for the Western shore, had given testimony before the general court, by answering a number of interrogatories relative to their knowledge of the rules and practice of the office, and that this testimony remained in writing in the office of that court. Through the kindness of the present clerk of the court of appeals, I was permitted to take a copy of those papers. They have engaged my attention, and assisted my researches in the progress of this compilation. I have, as in some other cases, been in some doubt as to the use which ought finally to be made of them, being apprehensive that in laying before the public a succession of unpremeditated answers to difficult questions, I might be deemed not sufficiently to have consulted the reputations of the gentlemen who gave them. In conclusion, however, as this work is, taken at large, a collection of evidence relative to the practice of the land office; as these examinations furnish, so far

as they extend, evidence in the highest degree respectable and authentic, and as the circumstances under which they were taken will, no doubt, be properly considered, if any allowance upon that account should appear necessary, I have conceived that I could not, consistent with my professed design, decline to give them a place in this publication, or present them in any other than their original form. The testimony which they exhibit, will be found to quadrate generally with what I have on different occasions advanced, on the points to which it refers. It is to be regretted that the enquiry was not more general, and that the answers are in so many instances neutralized, or perplexed, by the form of the questions proposed by the respective counsel. If these answers shew that there was something remaining to be known, even by the the two persons the best informed in land affairs, it will no way impeach their intelligence or industry. The greater part of the information which I have been enabled to obtain concerning the ancient practice has been derived from records and documents not in the land office, but chiefly in the council chamber, where, for any purpose but that which I had in view, no person would have thought of searching for the practice of the land office. It is not my design, however, by seeming to apologize for this testimony, to depreciate it. I consider it as a valuable document, or I should not have produced it, being in reality rather straitened for room than for matter to complete my undertaking: I here present it, as copied from the original papers, observing only that I have taken the liberty of supplying a few negligences in punctuation &c. scarcely to be avoided in an original and hasty manuscript, and which might in some places render the sense obscure. I have also taken a liberty in point of arrangement, by placing the answers under the questions to which they respectively apply, instead of giving the latter in immediate succession, and then the answers collectively, as they are for the most part, though not throughout, found in the original papers. This method I pursued for my own convenience in examining the testimony, and I have thought it the most eligible for publication. In substance the whole is faithfully transcribed.

Testimony of Alexr. C. Hanson, chancellor, and John Callahan, register of the Land-office, concerning the rules and practice of the Land-office: given before the general court in the case of Hammond and others vs Norris—1803.

PLAINTIFF'S QUESTIONS TO THE CHANCELLOR, WITH HIS ANSWERS.

1*st Question.* Do you know of any usage or practice *not in writing*, that prevail in the land office, except such as you

have made and adopted? if yea, from whom, and how did you derive your information?

Answer. I cannot positively say whether or not there is any usage or practice in the land office which has not been committed to writing, or by me made or adopted: But, I think, from the nature of the case, that there must be usages, and practices never reduced to writing, unless found in decisions given at large in writing: in fact, I have seen records or writings of very few usages and practices; but I cannot think otherwise than that several usages and practices have been established in the land office, arising merely from decisions of the judges, without any proclamation, instruction, or rule laid down by the proprietary. For instance, the warrant of resurvey is either expressly directed or recognized by the proprietary's instructions or proclamation—the authority given by it is to resurvey *an elder* tract or tracts, with liberty to throw out land comprehended in elder tracts, and to add contiguous vacancy:—No instruction, or proclamation, directed that the owner of the warrant should, from the date of the warrant, have for two years an exclusive right to take all vacancy contiguous to his elder tract; but so, I have every reason to believe, it was early determined by the judges: and ever since, it has been held, or at least it has long since been held that no man has a right under any kind of warrant to survey land contiguous to a patented tract of land on which a warrant of resurvey has been before taken out so long as the warrant remains in force. Whenever a new case, or a case new to me, arose before me, and I was apprized of no written law, usage, or practice, on the subject, it was natural for me to apply, and I did apply, to the register, who had many years before been employed in the office. Sometimes he recollected cases under the old government, which he quoted, and produced: sometimes he recollected no case, and, then I was obliged to determine as well as I could from analogy. In fact, I may say that I *have* derived information of usages and practices, prevailing in the land office, not reduced to writing: that I have derived information from no person except the register; but that I consider several usages and practices in the land office; without any writing, to be as well established as they could have been under a positive law.

2nd Question. Is there any rule or practice in the land office that permits a special warrant to run through an elder survey and to take up vacant land, that does not equally apply to a warrant of resurvey? And does the same construction apply to both when they run through elder tracts and take up vacant land over and beyond such elder tract, and not connected with the first part?

Answer. I know of no rule or practice in the land office respecting the running through elder surveys that does not apply equally to special warrants and warrants of resurvey: I cannot well answer the latter part, not knowing the meaning or drift of it. I can only say that neither warrant can affect two pieces of land absolutely unconnected; or in other words that no certificate, under a warrant, which comprehends two tracts or bodies of land wholly unconnected with each other, is good.—This, I conceive is a very ancient rule established in the land office.

3*d Question.* Whether or not are the proprietary instructions in the land office, and there recorded, which from time to time were given by the different proprietors regulating the manner in which their lands in their province of Maryland should be granted?

4*th Question.* Whether or not do you know of any other instructions given by the proprietors of the province on that subject except such as are there recorded? If so, what were those instructions, and from whom did you receive your information, and at what time?

Answer to the two preceding questions.

I understand there are such instructions as are mentioned in those questions, and I know not of any instructions relative to the land office except those which are recorded or were recorded in the land office.

5*th Question.* Whether or not do you know of any proprietary instructions or proclamations relative to the granting lands in the province of Maryland, which were ever issued, that are not remaining recorded in the land office? and if so, which proclamation or instruction, and when, or by which of the proprietors of the province issued?

Answer. I do not know of any such proclamations which are not remaining recorded. To explain my former answer I can only say that I have understood from the register that some of the instructions or proclamations of the proprietary, on which usages and practices were grounded, are not in the land office.

6*th Question.* Have not grants been directed by the judge of the land office for vacant lands taken up by warrant of resurvey where the person who took out the warrant of resurvey had only an equitable interest in the original at the time the warrant was taken out, and the survey made, and *that* although such certificates were caveated?

Answer. The full extent of the term *equitable* interest may not be perfectly understood by me. I do know that grants have been issued for vacant land taken up on a warrant of resurvey where the owner was entitled to the elder tract under a certificate compounded on, but not *patented* to *him*, or, *any*

other person; but I know of no rule or practice which directs that in every case whatever an equitable interest in an elder grant shall be a ground for a warrant of resurvey.—See the case of Schofield, in point, as to a certificate of resurvey on an unpatented certificate. If there are other cases in which an equitable interest has been deemed sufficient, they can be shewn, and the court will judge of them—I am reminded of the case of a mortgagor taking out a warrant of resurvey: It may not be proper for me to attempt to inform the court, by making distinctions, but I trust I may be excused for saying that it is a rule in the court of chancery to consider either the mortgagor or the mortgagee as the legal tenant, just as convenience requires; that is to say, if it be convenient for the mortgagor to be so considered, and not injurious to the mortgagee, the court will consider the mortgagor as the legal tenant notwithstanding his conveyance—It is well known that a positive law of 1789 directs the chancellor in the land office to decide on the established rules of chancery.

7th Question. Whether or not do you know any instance under the proprietary government where a person taking out a warrant of resurvey on a tract of land and returning a certificate including vacancy, and compounding for the said vacancy at a time when no other person had by any act obtained an interest therein, being, by refusal of a grant for it deprived of the vacancy so taken up and paid for because he had not a legal title to the original? if so, in what case, and between whom?

Answer. In my answer I might say this question is too indefinite, for this simple reason, that it involves a variety of points. 1st Whether any other person had obtained an interest might be difficult for the chancellor to decide, supposing him even referred to a particular case in which the question should be made. Upon the whole, I can only say I know of no such case as is stated in this question: I do not recollect a case where a man taking out a warrant of resurvey, returning thereon a certificate, and compounding on it, has been deprived of the vacancy because he had not a legal title to the original: but by saying this I do not mean that there can be no such case, or that there ought to be no such case. I only say I do not remember such a case decided by myself: as to former cases I must depend on the register's information, or records or papers which I peruse over occasionally.

8th Question. Whether or not do you know of any instance where patents were refused by the judge of the land office under the proprietary government, though the certificates were not caveated, except where the certificates were supposed to interfere with the proprietor's manors or reserves? if so, in what cases, and for what reasons?

Answer. If asked whether such a case could exist, I would answer I knew of no such cases. The fact is, that I had, before the revolution, little opportunity of knowing proceedings in the land office, under the old government: the knowledge of former proceedings in the land office which I have since gained, has been from examination of the register, and of the records and papers in his possession.

9*th Question.* Has it not been the usage and practice of the land office, on the trial of a caveat, that the interest of the caveator should appear?

10*th Question.* On the hearing of a caveat, unless the caveator's interest in the land in dispute appears, has it not been the usage and practice of the land office to dismiss the caveat;

Answer to the two preceding Questions.

I positively say that there has been no such usage or practice:—that is to say, there is no rule under which a caveat *must* be dismissed merely because the caveator shews no interest. Where the caveator shews no interest, but shews a cause of caveat, the judge determines merely with attention to the interest of the state, or perhaps its officers.

11*th Question.* Has it ever been the practice of the land office, or was ever a certificate of resurvey vacated on the ground the person made the resurvey had no interest in the land resurveyed; or because the resurvey crossed elder tracts, when it appeared at the time of the resurvey, at the examination of the certificate, and at the payment of the money for the vacant land, no other person had obtained a warrant to affect the land included as vacancy? If so, in what instance?

The Chancellor. Not to be answered.

12*th Question.* Do you know of any usage or custom that directs the judge of the land office to vacate a certificate because a rule of the office has been violated, but the violation of which rule did not, and could not injure or impair the proprietary interest—and where is the same to be discovered?

Answer. I certainly do not know of such a rule; But I humbly protest against any general questions by which I may be entrapped. Suppose it alledged that the rule was laid down in such or such a particular case, or that a certificate was in such a case vacated merely on account of a violation of a rule, which did not injure or impair the proprietary's interest,—I might have been asked whether such a case existed.

13th *Question.* Was the interest of the proprietor injured or impaired by a resurvey having been made on a tract of land of which the person resurveying was not seized in fee, or was any other person's interest affected provided the whole

caution money was paid before any other person had obtained a warrant to affect the vacant land included in such resurvey.

The Chancellor. Not to be answered.

14th *Question.* Where a resurvey has been made that runs through elder tracts so as to include separate pieces of vacancy, and the caution money is paid for the land contained in the resurvey, was not more money paid for the land than the proprietor or the state would have received if the detached pieces had been separately taken up.

Answer. I conceive this is a question which has little or nothing to do with the rules or practices of the land office, and which any person of common intelligence might answer as well as the chancellor: But, I do not perceive how more money was to be paid (for instance) for 100 acres of vacancy in one tract than for 100 acres in 5 tracts. There are in each case 100 acres to be paid for. To be sure, in the first case he pays for the land contained in the elder survey, belonging to another person, and therefore he pays more, &c.

15th *Question.* Has such a survey ever been vacated or corrected unless at the instance of the owners of the patented tracts so run through, or at the instance of some individual who had obtained a warrant to affect the vacant land? if so, in what instance?

Answer. I have little recollection of cases. I therefore, without consulting the register or examining proceedings in the office, say, at this time, that I do not remember that such a survey has been vacated, or corrected, unless on the application of the owners of the patented tracts runs through, or at the instance of some individual who had obtained a warrant to affect the vacant land: But, on the appplication of the owners, assuredly, the survey would not be corrected, although their caveats would be ruled good. When a caveat is ruled good, it rests with the owner of the certificate to say whether or not he will have an order for correction. Sometimes he applies for such an order, and sometimes he prays that his certificate may be vacated. He acts as he conceives suits his own interest.

Additional interrogatories for the plaintiff.

1st. Do you know of any rule or practice of the land office establishing a distinction that a warrant of resurvey may issue on one equitable interest and not on another?

Answer. Certainly, there has been no decision within my memory that distinguishes the equitable interest on which a warrant of resurvey may issue from another equitable interest on which the warrant may not issue. I have in my answers referred to the only two cases on the subject which I recollect.

2nd. Doth not a court of equity consider every person who is equitably entitled to land as the legal owner of the land?

Answer. I might well object to this question, because the answer might be drawn from Books: However, I will answer so far as to say that, in general, a court of chancery considers that which is agreed to be done as already done.—For most purposes it will consider him who has contracted and paid for land, without obtaining a deed, as the owner of the land.

3d. Do you know of any decision in the land office under the proprietary government agreeably to the opinion you have given in your answer to the eleventh question put by the defendant? If so in what case?

4th. Do you know of any decision in the land office under the proprietary government agreeably to the opinion you have given in your answer to the 12th interrogatory put by the defendant? and if so, in what case?

5th. Do you know of any decision in the land office under the proprietary government agreeably to the opinion you have given in your answer to the 13th interrogatory put by the defendant? and if so, in what case?

Chancellor. One answer to the 3d, 4th, and 5th questions may suffice. I do not remember by name a single decision in the land office before the revolution, nor (I may add) do I recollect the substance of any such decision relative to the subject of any of the said three questions.

Questions propounded by the Defendant to the Chancellor, and his answers thereto.

1st *Question.* By the rules of the land office can any person entitle himself to a patent upon a certificate of resurvey unless he is at the time of the grant, or was when he obtained the warrant of resurvey, seized of the original so resurveyed.

Answer. No. I conceive that there have been decisions in such cases as this that the owner of a certificate of resurvey, on caveat, cannot succeed unless he shew himself seized, or having an interest.

2nd *Question.* Is the want of seizin or title to the land so resurveyed a sufficient ground to vacate a certificate of resurvey even after the composition money has been paid by the owner of such certificate.

Answer. Yes. There has been no decision that I recollect in my time: But I have understood that the question

was settled under the proprietary government, and, upon principle, I am of opinion the decision was right.

3d *Question.* If the fact that the owner of a certificate of resurvey had no such original tract as entitled him to a resurvey, at any time before grant, is legally made known to the judge of the land office before grant issues on such certificate, is it or is it not sufficient to preclude the owner of such certificate from obtaining a grant upon the same?

Answer. The fact is, I conceive, sufficient to preclude the owner of the certificate from obtaining a grant on the same. [*See the last answer.*]

4th *Question.* If after the payment of the composition money upon such illegal certificate, and before patent, a warrant issues, and a certificate upon that warrant, including vacant lands before included in the first described illegal certificate, is regularly made, returned, and compounded on, will not the owner of that younger certificate be entitled to patent for the lands included therein upon the vacation of the elder illegal certificate.

Answer. Yes. It has always been by me considered as a settled rule that whatever has been done under an improper warrant is void;—that is to say, with respect to the younger certificate, matters were on the same footing as if the eldest had never been made.

5th *Question.* On the hearing of a caveat in the land office, if the certificate caveated is objectionable, and it should appear that the caveator has no interest in the land in question, is it the law of the land office that the caveat shall be dismissed notwithstanding the certificate caveated should appear to be defective?

Answer. No.

6th *Question.* Have you always understood and considered these as the rules and regulations of the land office as well under the proprietary government as since the revolution?

Answer. I have understood then (I cannot say always) but ever since the points have been made and examined by me, to be rules under the proprietary government, and as such I consider them as rules under the present government. Most certainly, I consider them as rules to be observed by me in case, on caveat, the questions shall come before me, Some of the rules have, on caveats before me, been actually recognized;—others have not.

As to the 2d interrogatory, since I gave my answer, I have been referred to the case of Chapline and Reedy, in which I gave a decision which I conceive may be considered as a case in point.

Additional answers of Alexander Contee Hanson to the Defendant's first 6 interrogatories.

1st. If there be no caveat, or known objection to a certificate of resurvey, the owner, of course, obtains in due time a patent. If there be a caveat, he cannot obtain a patent unless he can shew himself in some way entitled to the tract or tracts on which the warrant issued. As to the term "seized" I know not well what to say; and lawyers may differ as to its import. I give this answer in addition to my former answer; and it is suggested by an interrogatory on the part of the plaintiff.

2nd. The want of seizin or title to the land resurveyed I conceive is a good ground to vacate a resurvey. There has indeed been no decision that I recollect, in my time, where a caveat against a certificate of resurvey has been ruled good on the ground of no seizin or title in the owner. But possibly the register may recollect such a decision. I have understood that the question was settled under the proprietary government, and, upon principle, I am satisfied the decision was right. At least I consider it as an established rule that the owner, on caveat, must shew seizin or title, or lose the benefit of his resurvey.

3d. The fact stated, I conceive sufficient to preclude the owner of the certificate from a grant on the certificate.

4th. In this case, I am satisfied there has been a decision, and I have always considered it as a settled rule that whatever has been done under an improper warrant, or under the pretext of a warrant not authorising it, is to be held, on caveat, void; that is to say the younger certificate is on the same footing as if the elder certificate had never been made. To illustrate this I state a case—A takes out a special warrant, describing the land so as to designate his intent with respect to beginning: The land he surveys is divided into two distinct parts by an elder tract: Afterwards B surveys the part so cut off from the beginning. B shall obtain a patent, notwithstanding the land has been before surveyed.

5th. No. There is no such law or practice of the land office—Nor is it the absolute rule that the caveat shall be admitted. Circumstances have always governed me. If the caveator has no interest, I consider the interest of the state, and the rules of the office. If neither that interest is affected nor wholesome rules violated, such as that 2 distinct tracts shall not be contained in one patent, unless in particular cases &c. &c. I dismiss the caveat.

6th. No additional answer.

7th *Question.* Upon a special warrant, if there is vacancy not contiguous, and the party makes two surveys and returns

two certificates, is he entitled by the laws and practice of the land office to two patents ?

Answer. I know not that I clearly understand the question. I can only say that a special warrant may be used as a common warrant, and two certificates may be returned under a common warrant. I suppose the question means a special warrant of vacant cultivation.

8th *Question.* Upon a warrant of resurvey, can the party by the rules of the land office return two certificates, one for the vacancy contiguous to the original, and the other for the vacancy separated by elder surveys ; and if he so does return them and pays the caution money in time for all the vacancy, and the certificate is caveated—is the party entitled by the rules and law of the land office to a patent for the land not contiguous to the original ?

Answer. Most assuredly not. Most wisely are different warrants instituted for different purposes. To secure the vacancy not contiguous, the party ought to have taken out either a common warrant or a special warrant. In no possible case can a warrant of resurvey be considered as a common warrant to affect land not contiguous to the tract or tracts to be resurveyed. It is perhaps worthy of consideration that on a survey under a common warrant, the owner could not, he was not allowed to comprehend more land than the quantity expressed by the warrant, and he paid for the land on taking out the warrant.

The warrant of resurvey was, at first, intended to give the party an opportunity of correcting his old patented tract or tracts, by leaving out &c. and inasmuch as it was the idea that his tract or tracts would be deficient, the warrant contained a liberty to add contiguous vacancy ; but on this warrant the party did not, as on the common warrant, pay for land—he had credit for two years for the vacancy added—this being the case, it is impossible that under the old government (or since) there shall have been a case where a warrant of resurvey has been construed as a common warrant, to affect land not contiguous.

9th *Question.* If a certificate on a warrant of resurvey is returned, in which vacant land is included not contiguous to the original, but separated by elder surveys, and the person returning the said certificate has paid the caution money for the land not contiguous to the original, and no patent has issued, and a man by a warrant taken out after the payment of the said caution money returns a certificate including the vacancy comprehended in the certificate of resurvey which is not contiguous to the original, and pays the caution money—

If the above facts appear to the judges of the land office, would not, by the laws of the land office, the former certifi-

cate be vacated as to the vacancy not contiguous, and patent issue to the younger certificate.

Answer. Yes. I suppose it is meant that the land contained in the certificate lies in two separate parcels.

—

Additional interrogatories of the Defendant.

11th. Is a man by the law and practice of the land office entitled to a patent on a certificate including vacancy, returned upon a warrant of resurvey, and on which he has paid the composition money for the vacancy included, if it appears on caveat that he has no legal estate in the original but his whole title is a bond of conveyance for the same, and he has *neither paid* the purchase money for the land, nor *ever* been in possession of the same ? And has there been a new or different law or rule on this subject since the American revolution from that which prevailed before that event ?

Answer. When the chancellor was interrogated respecting equitable title, he was apprehensive that this was the case of equitable title meant. He answers, without hesitation, that in no case can a bond from A to B for the conveyance of a patented tract of land give B a right to a warrant of resurvey on the said tract, whether B had paid the purchase money or not, or whether he was in possession or not.

I accede to the answer of the chancellor,

JNO. CALLAHAN.

—

12th *Question.* Is a man by the law and practice of the land office entitled to a patent on a certificate returned upon a warrant of resurvey including vacancy, and on which he has paid the composition money for the vacancy included, if it appears upon caveat that he has no legal estate in the original, but his only title to the same is a bond of conveyance for the same, and he *has* paid the purchase money for the original, but has never been in possesssion of the land. And has there been any other on different law or rule on this subject since the American revolution from that which prevailed before that event.

The Chancellor. This question answered above.

(Signed)

A. C. HANSON, *Chancellor.*

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13th. Is a man by the law and practice of the land office entitled to a patent on a certificate returned upon a warrant of resurvey including vacancy and on which he has paid the composition money for the vacancy included, if it appears upon caveat that he has no legal estate in the original, but his only

title to the same is a bond of coveyance on which he has paid the purchase money, and he has been from the time the warrant issued in possession of the same original? and has there been any other or different law or rule in the land office on this subject since the American revolution from that which prevailed before that event?

Answer. This answered above as to the first part. There has prevailed this law before and since the revolution.

(Signed)

A. C. HANSON, *Chancellor.*

14th. Has there been any other or further rule on the subject contained in your answers to the defendant's 7th, 8th, and 9th interrogatories, which has prevailed since the revolution, and which did not prevail before,

Answer. I am positive that the same rules respecting the subjects of the said 7th, 8th, and 9th interrogatories have prevailed before and since the revolution, and indeed I have never known them even controverted. If they have been controverted in my time, in cases which I have forgotten, I am positive that I must have decided instantly on the points.

Questions put to Mr. Callahan—by the plaintiff.

1st. When did you first enter the land office.

Answer. In the latter end of the year 1767.

2d. Do you know of any proprietary regulations for taking up vacant land except the written regulations now in the office?

Answer. He does not know of any regulations given by the proprietary for taking up land except those now of record in the land office.

3d. Is it not, and has it not been the practice of the land office since your recollection, on a caveat being entered, for the judge, at the request of the parties or either of them to appoint a day for hearing?

Answer. He believes that under the proprietary government it was the practice generally for the parties to obtain subpœnas without applying to the judges, though in some cases the judges did appoint times for hearing: Since the revolution, the chancellor has on application of either party made appointment for hearing.

4th. At the day of hearing have not two questions always been considered; first, the defects of the caveated certificate, and second how it affected the person caveating?

Answer. He does not recollect any case where the caveator did not at the time of hearing shew, or attempt to shew, a superior title to the land caveated.

5th. Did you ever know an instance in which a certificate had been vacated for any defect unless the person caveating shewed his interest in the land?

Answer. He does not now recollect any particular instance in which a certificate was vacated for any defect, unless the person caveating shewed his interest in the land; except where in one case the chancellor declared both certificates void; and, in another, where the party admitted there was no actual survey.

6th. Is it not the invariable practice? or did you ever know the judges to order a certificate to be vacated or corrected, where the interest of the caveator did not appear?

Answer. To the first part of the question he answers that it has been the practice for caveators to shew their claim to the land at the time of hearing: To the second part, that he does not recollect any case in which the judges ordered the vacation or correction of any certificate where the interest of the caveator did not appear.

7th. At the time of trial of the caveat unless the interest of the caveator did appear or was admitted, has it not been the invariable practice to dismiss the caveat unless the caveator required further time to make his interest appear?

Answer. That from the cases stated as exceptions in the 5th question, it cannot be considered to have been an invariable practice to dismiss caveats unless the caveator shewed his interest, but states it to have been a general practice.

Questions by the Defendant to Mr. CALLAHAN.

1st *Question.* Did you ever know a caveat dismissed where the certificate caveated was objectionable because the caveator had no interest in the land included in such a caveat?

Answer. I have no recollection of any such case occuring.

2nd *Question.* If a person having no legal seizin in an original, executed a warrant of resurvey including vacancy and paid the caution money, and this same vacancy was afterwards included in a subsequent certificate, and paid on,— on a caveat by the latter, would the first certificate, according to the general usage of the land office, be vacated as to the whole of the vacancy? if yea, mention any particular instance.

Answer. I do not recollect any instance where on caveat on the ground of the party not being seized in fee, and the allegation supported, that the caveat did not prevail, so far as my recollection goes, in all cases in the land office.

3d *Question.* If it appeared to the judges of the land office, on such caveat as is mentioned in the second question, that the person claiming under the second certificate had paid up the caution money and complied with other requisites, would he by the general usage and practice of the land office be entitled to patent for the vacancy, on vacating the first certificate?

Answer. Yes.

4th. If the first certificate alluded to in the second question was vacated, would or would not the party claiming under the said certificate be entitled to receive as much land warrant as would be equal to the amount of the caution money paid?

Answer. Yes.

5th *Question.* When did the proprietary order pass directing that certificates returned to the land office should lie a certain time in the office before they were patented, to afford an opportunity of filing caveats? and what was the time they were so to lie? Was it, or was it not before that order, customary to grant patents upon a certificate examined, passed, and compounded upon as soon as it came into the office, if applied for?

Answer. The instruction was given in written rules by the board of revenue of the proprietary in the year 1768, for certificates laying in the office three months. It generally, was not the rule, he thinks, to issue patents immediately on the certificates being returned, but to lay some short time, though in some cases they might have issued. This, however, his age and short acquaintance with the office at that time enables him to say little about.

Having obtained the indulgence of the court to answer the interrogatories at leisure, I have revised the answers given before I left court, and have in some respects added to them, conceiving that it was the intention of the counsel to obtain the fullest information in the power of the chancellor and the register to give them, the chancellor, after finishing his answers, communicated them to the register, who has fully concurred with him. Perhaps, indeed, that gentleman, whose intelligence, correctness, and integrity are well known, might have given all the information which is contained in the answers of the chancellor. The concurring testimony of both, it is to be supposed will be considered as satisfactory evidence of the laws, or usages, or practices, of the land office, so far as they declare laws and practices to exist.

The chancellor considers himself justified and even called upon by his duty, to endeavor to refute a position which he

understands has been more than once advanced, that there is nothing which can be considered as the law of the land office.

The lord proprietary of Maryland, as well as any other man, might surely determine on what terms he would grant his lands. He might surely, as well as any other man, instruct his agents with respect to the manner of granting his lands; and what are those terms and those directions may be a proper subject of enquiry, and when discovered, ought surely to govern. It has been already said that all the proprietary's proclamations and instructions are not to be found on record. But, notwithstanding that, the practice arising from these instructions is as well known as the common law of England, which certainly must have been at first committed to writing, long since lost. The practice of the land office I conceive is as well known as the practice of the courts of law in England, the original written laws for the regulation of which have also long since been lost.

No writing is found in the land office prescribing the forms of the different warrants which are framed for different purposes. Can any man, merely on that account, pretend that the forms and the substances of those warrants are not settled?

There are five warrants, viz. common, special, of resurvey, of proclamation and of escheat; and it has long since been established that when a man applies to the land office for a warrant, he must (to succeed) take that warrant which is adapted to his case. In some cases indeed any one of three warrants will answer his purpose, as may be seen by what follows.

By a common warrant only vacant uncultivated land can be taken; by a special warrant vacant cultivated land may be taken, and if the warrant contains a sufficient description of the land intended to be secured, it gives an incipient title against every person who has not before taken some method to secure the land. A warrant of resurvey authorises the owner to resurvey a tract or tracts of *which he is seized*, or to which he is entitled: to turn out such part thereof as is contained in elder tracts, and to add contiguous vacancy. Hence it appears that a piece of vacancy may be secured in three different ways, or under three different warrants.

Originally (although there is no written rule to be found) the common and special warrant were paid for by the acre, and the survey was not to comprehend more land than the warrant expressed. By the warrant of resurvey a credit was given to the owner for two years from the warrant's date, within which he was to make his survey.

If an owner of a warrant of resurvey, returning a certificate, did not compound for it within the time limited, any

other person might obtain the vacancy on the same terms, by virtue of a proclamation warrant, so called because founded on a proclamation: If he, too, suffered the time to elapse, another person might obtain another proclamation warrant, and so on. The proclamation, I believe, is not on record in the land office.

By a regulation of the proprietary, if a person seized of a patented tract of land died intestate, without leaving heirs, the land was subject to an escheat warrant, and the person obtaining it was to pay for the land two thirds of the value. I know not whether or not this regulation is to be found on record. But our act of November 1781 provided for this warrant, as well as for a variety of other proceedings.

After the revolution, when the state succeeded to the rights of the proprietary, laws were passed, making some alterations, and particularly with respect to the time allowed for compounding. The warrant taken out on failure to compound still bears the name of a proclamation warrant: All the other warrants are in use. The rules prescribing the forms of them (if such rules there ever were) are perhaps not found on record. But, can it, at this time be said that there is no rule or known practice, or usage, concerning them? The forms are actually in the office; and indeed most of the usages and laws, as they are called, may also be found in the office, on searching the various decisions.

By the act of Nov. 1781, ch. 20, the land office was opened, and various rules prescribed. The chancellor is declared the judge to determine on all disputes; and with respect to future surveys he was directed to determine according to the rules to be prescribed to certain officers by the governor and council, and with respect to former surveys he was directed to determine according to former rules. Here, then, the legislature has certainly created rules for the land office.

Say that those old or former rules were not on record; the legislature, meaning something, must intend traditionary rules, concerning which the chancellor was to decide, without appeal; and therefore his decisions were not liable to be controuled or reversed in any manner by any other tribunal.

In the disputes coming before the chancellor, frequently there are points of law, independent of land office rules, which are brought into controversy. The chancellor, conscious that his power is invidious, has embraced every opportunity of referring an important litigated point of law to the general court, and every important litigated fact to the trial of a jury under the direction of the said court, reserving to himself the rightful power of determining on the rules, usage, and practice of the office.—In fact he has always done that in the land office which on similar occasions he has done in the

court of chancery. There was indeed, no positive law directing him to refer either law or fact to another tribunal: But, he made these references under the idea that *usage* and *practice*, as well as propriety required them. But, it is impossible for him to conceive, when no law, usage, or practice, authorises any other tribunal to controul his determination respecting a law, usage, or practice of the land office, that such a power ought now, without the interference of the legislature, to be assumed—He avers that his determination ought to be considered as conclusive with respect to the law, usage, or practice of the land office.

He avails himself of a favourable opportunity to offer his remarks to the general court, and he does so from a full persuasion that it his duty to assert and maintain the privileges vested in him by the constitution and the laws. It would undoubtedly appear strange, if, on the trial of a caveat, he should determine against the known decision of the general court and court of appeals; preferring arrogantly his opinion to theirs; and yet, if he should do so, the injured party would be wholly without redress. For instance, the owner of a certificate dies, leaving a will, under which A B claims. The true construction of the will has been settled by the general court, on an ejectment brought by A B for a patented tract devised to him, as well as was devised to him the certificate land in question. The court of appeals affirms the judgment. In such a case A B gains the patented tract by the decision of the general court, and by the chancellor's decision may lose other land which he is just as much entitled to. He is wholly without redress; because there is no appeal from the chancellor, and because there is no written law directing the chancellor to adopt the decision of the general court: But there is no danger of his losing the land, because the chancellor, without the written law, is well apprised of the usage or practice of referring to judges of law those points which are proper for their decision, and of preferring the verdict of a jury, on oral testimony, to his own judgment, on defective depositions.

The chancellor likewise presumes to avail himself of this opportunity of remonstrating against any court of law deciding on equity. He begs to remark on the advantage of keeping all departments in the administration of justice distinct and separate. It is the province of a court of law to determine in whom is the legal title to a tract of land; but, he humbly conceives that so long as a patent or deed is unvacated by the court of chancery, no court of law ought to determine that the legal title shall not avail because it was acquired contrary to the rules of equity, or of the land office. From the nature of things, it is impossible, after a great length of time for a

jury under the directon of the court, to determine safely that a patent was obtained contrary to equity, as well as against the rules of the land office. He could mention cases where there have been awarded by himself with *strict propriety*, patents, which on examination by a court and jury 20 years hence, will appear contrary to the rules of the office, and against equity. They have been awarded on a compromise between the parties, recommended by himself appearing on record, and where the agreement is not reduced to writing.

I entreat the honourable court to pardon the freedom I take in exceeding the bounds allowed to a witness, and in speaking as chancellor and witness combined.

I trust that either the information I have given by my answers will be satisfactory, or that it will be concluded that no other information can be properly obtained from me. When requested to appear as a witness, I supposed that I should be examined only respecting the settled rules of the land office, and that no other object was in view but to obtain information respecting the law, usages, or practice in the said office. I ought indeed to have reflected on the nature of each question, and the result of my answer, before I answered it. When I asked leave to retire, in order that I might better answer the interrogatories proposed, it had struck me that probably several of the interrogatories were improper to be answered at all, and that I had improperly given answers already. It must strike the court that if I were obliged to answer every interrogatory the counsel might propose, it would be in their power to obtain my opinion on points not relevant to the cause, but of importance in cases depending in the land office or elsewhere, and that I might commit myself by premature opinions. I recollect that whilst I was before the court, the chief justice suggested, as I understood, that it ought to be at the chancellor's discretion to answer or not answer interrogatories proposed to him. This idea was certainly just, and becoming the chief justice, and it ought to have struck me before. It cannot surely be in the power of parties or their counsel, by summoning a judge of any court whatever as a witness, to draw from him his legal opinion on points of importance to causes depending before him. Perhaps I have already answered too fully to the interrogatories proposed:—But, now, being fully on my guard, which I was not when I appeared before the court in a most unusual situation on Saturday last, I beg leave to suggest to the court that a witness, in every case whatever, is bound to depose only as to matters of fact. What has heretofore been settled as a rule in the land office, or what decision, heretofore, has been given in that office, may be properly consider-

ed as a question of fact: but if, directly or indirectly, I should be asked how I should decide in such or such a case, the question cannot be considered otherwise than as improper.

Perhaps this is the first instance, in this state, in which a judge has been called on to answer interrogatories relative to the law, usage, or practice in his court prevailing. The land office indeed may not be considered as a court of record, because the chancellor, the judge, has not there a power of fine and imprisonment; but what of that?—

I must regret that being suddenly called on, and engaged in other affairs, I consented without hesitation or reflection, to appear as a witness, and that having so consented I did not reflect on, or sufficiently enquire, respecting the nature of the evidence to be given. However, I trust that my answers have given a just account, but still I beg leave to remark that neither the counsel ought to have requested me to answer as a witness, nor ought the court to have permitted me to appear as a witness, nor ought I to have consented to appear as a witness, unless required, like any other witness, to answer *viva voce*, respecting mere matters of fact.

A witness in a court of law is called upon to testify only with respect to a matter of fact: I know of no instance where he is called on to testify as to a point of law. No man is called on to tell the jury on oath what is the law of the land. If he were, the chancellor might with propriety, instead of referring to the court in the usual way, questions of law, have the judges of the general court summoned as witnesses. In a variety of causes he might do this.

The consent of parties may cure errors between themselves, but cannot alter the law with respect to other persons. Whether the agreement of the parties by their counsel, has rendered my testimony, which now I do not wish to withhold, proper for the jury, and whether there has been such an agreement; and how far, with or without an agreement, my testimony is to prevail, is to be determined by the court. I think proper, on the reflexions which in the course of a few hours I have made, to protest against any right which parties or counsel may hereafter claim of compelling the chancellor to appear as a witness, and to declare what in his opinion is the law, usage, or practice of the land office, or what, on such or such an occasion he would consider as the law &c. And I flatter myself that on reflexion the court will consider me as justified in making the protest.

(Signed)

A. C. HANSON, *Chancellor.*

CHAPTER XII.

RULES AND PRACTICE AT LARGE, AND GENERAL REMARKS.

HAVING in the foregoing chapters exhibited all the authorities, whether of laws, ordinances, instructions, or decisions, on which the practice of the land office is founded, I shall now proceed to apply those authorities, and, without being any longer restricted by precise divisions of the subject, to state the principles, rules, usages, and interpretations, by which the office is at present governed; in doing which, I must again describe the nature and properties of the different kinds of warrants, and repeat many things that have been said before: but, for this, I believe, no apology will be thought necessary, for the desultory manner in which I have been obliged to present the various matters composing the practice makes it almost indispensible that they should finally be abstracted, and brought together, in the way now proposed. I shall also, in this summary recital, notice the most important of those principles that arise out of the decisions which have been exhibited, intermixing, so far as it may be done without presumption, my own reflections and impressions on the whole subject.

All warrants are issued by the register, under his signature, and the seal of office: they must be executed within one year from their dates; and this applies as well to *parts* of warrants, assigned or not, as to entire warrants; so that no survey is good which is made in virtue of a warrant that has previously been a twelvemonth in force.

All certificates must be returned to the land office within eighteen months after the date of the warrants on which they are founded, otherwise they can never be received, but are null and void.

All certificates (under warants) must be examined and passed by the examiner before they are received into the office, so as to be ever capable of being patented.

Where an order is passed for the correction of a certificate, the corrected certificate is to be examined (if necessary) and is to be returned, together with the erroneous certificate, within nine months from the date of the order; otherwise it can never be received.

Where a certificate is found erroneous by the examiner, or where, on application of the party, an order is given for the correction of a certificate, and there is not time for the rectifying the error, or making the particular correction ordered,

as the case may be, so as to enable the party to compound thereon within the time limited by law; on a tender being made of the money to the treasurer, three months are to be allowed for the correction of such certificate, which being passed by the examiner, and payment made within the said three months, the certificate is exempt from any invalidity or disadvantage; it being understood, however, that the tender must be made within the regular period assigned by law for composition.

Where a certificate, not compounded on, is caveated, (which cannot be done without the caveator swears or affirms that he does not do it by collusion, to favour the owner of the certificate) the time during which the caveat remains undetermined is not to be considered as part of the time limited for payment of composition, provided the proprietor of the certificate also swears that the caveat has not been entered, or its determination delayed, through his connivance, or collusion with the caveator, as heretofore more particularly stated. With these exceptions, all certificates must be compounded on within one year from the date of the warrants on which they are founded; otherwise they become liable to be affected by proclamation warrants.

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A person desiring to take up and secure land which he believes to be vacant must do it in one of three ways, viz. by a common warrant, a special warrant, or a warrant of resurvey. Common warrant affects only uncultivated land: a special warrant affects land cultivated or otherwise; and a warrant of resurvey affects land cultivated or uncultivated, adjoining to patented or surveyed lands therein mentioned, such lands being the property of the person who takes out the warrant.

A person intending to take up land by an original warrant goes in the first place to the treasurer (of the shore where it lies,) and, paying for the quantity he means to secure, at the rate of one shilling and nine pence, or, if the land is in Allegany county, one shilling and three pence, per acre, he obtains from the treasurer a titling or order, directed to the register of the land office, and requiring him to issue to, and in the name of, the person therein mentioned a warrant, common or special, as the case may be, for the number of acres for which payment has been made as aforesaid. The titling specifies the kind of warrant intended, and recites the payment that has been made.

If the order be for a common warrant, the party receives a warrant for the quantity therein expressed, of land "not for-merly surveyed for, nor cultivated by, any person;"—and

directed to any surveyor on the particular shore, legally qualified.

If the order is for a special warrant, it specifies the county in which the survey is to be made: The party is required by the register to declare where he will have it located, and gives such a location as he sees fit, which the register accordingly inserts, and directs the warrant, for execution, to the surveyor of the county mentioned in the order. The location is intended to bind and secure the land therein described from the operation of other warrants, and the more clearly and precisely it describes the land the more certainly it has that effect. The ordinary expression of locations is "adjoining" a particular tract or tracts therein mentioned; "adjoining and between" such tracts; or adjoining particular lines thereof; with any further references to boundaries, water courses &c. that may be given for greater certainty: but any description whatever is received by the register, and inserted in the warrant; the want of due precision being at the risk of the party.

If the land which a person has discovered to be vacant adjoins or is contiguous to land already belonging to him, and either on account of uncertainty as to the quantity of such vacant land,—its lying in several distinct parcels, the difficulty of making an effectual location, a desire to guard against the warrants of other persons, or to take the occasion of ascertaining the lines and bounds of his patented lands,—to unite several tracts under one survey and patent &c. &c. he finds it most eligible to secure such vacant land by a warrant of resurvey, he applies *directly* to the land office, and receives a warrant authorising the surveyor of the (*a*) county where his lands and the vacancy lie to resurvey the tract or, tracts, (or parts of tracts, as the case may be) therein mentioned, according to their ancient metes and bounds, correcting and amending however all errors in the original surveys, without running within the lines of more ancient surveys, adding all contiguous vacancy &c.—and this warrant binds and secures, from the operation of warrants of a later date, all the vacant land, cultivated or otherwise, which lies contiguous to the tracts or parts of tracts therein mentioned, for the time that it remains in force by law, unless within that time it should be executed, and a certificate of the resurvey be returned and received into the land office, when it may be considered as no longer in force, and any vacant land which has been thus bound, but is not comprehended in the resurvey, may then, it is believed, be affected by other warrants.

(*a*) If the land lies in two or more counties the warrant may be directed to the surveyor of either. There is no certain rule as to the choice, but the warrant generally issues to the surveyor of that county in which the land principally lies, or that in which the survey is to have its *beginning*.

Proclamation warrants, also, are taken to affect land which is in some measure vacant, but do not enter into the general idea of warrants to take up vacant land. They are taken out to affect land which has been regularly surveyed, and in a general way, a certificate thereof returned, but on which the composition remains unpaid after the expiration of a year from the date of the warrant. A person believing a certificate to be in this predicament has a right, by usage, to satisfy himself of the fact, by enquiry at the land office; always supposing that his question points to a particular certificate, or warrant, for no general enquiries are answered. Finding the certificate to be liable, he demands a warrant, upon which, the register, by an endorsement on the certificate, recites the application, and states that the party requiring such warrant will be entitled thereto upon his paying one tenth of the composition remaining due. The party takes the certificate, so endorsed, to the treasurer, who receiving the one tenth of the whole sum due for caution and improvements, issues his titling, or order, to the register to grant the warrant, as desired; specifying and describing, in the said order, the certificate, in all its circumstances, and the sum which has been paid; whereupon the warrant is issued, and the certificate deposited again in the office, where it remains, still capable of being patented to the original owner, or his representative, in case no return should, as it often happens, be made under the proclamation warrant, and the proclamated certificate should, after the expiration of that warrant, be compounded on.

According to the practice of the office, a person may also obtain a proclamation warrant on a certificate not returned. If the owner of a certificate chuses to proclamate it himself instead of compounding on it, he brings it to the office, without examination if he thinks proper, and on its receiving the endorsement before mentioned, he takes it to the treasurer, and obtains an order for a warrant. If a person means to proclamate the certificate of another, not returned or compounded on, he demands a copy of it from the surveyor, and producing this at the office, he obtains the endorsement, order, and warrant, in like manner. In these cases the certificate or copy remains in the office, but no patent can ever be granted upon the certificate so proclamated. If a person desires to affect, by proclamation, a survey made on the Eastern shore, but of which the certificate (being of course returned under a warrant issued before the first of March 1796) remains in the Western shore land office, he obtains from that office an attested copy of the said certificate, on which a proclamation warrant is issued from the office of the Eastern shore in the manner before described.

A person discovering, or believing, land to be escheat to the state by the death of its owner, (who must always in such case have been seized in fee) intestate, and without leaving heirs, as heretofore described, or as regulated by the law of descents, applies at once to the office; and, upon his mere suggestion and application, a warrant is issued, with such specifications, as to the cause of escheat, and the name, situation, and quantity, of the land, as the party is enabled, or chuses, to direct; in which it is obviously his concern to be as correct and as particular as he can especially in regard to the description of the land. The two warrants last mentioned have all the privileges of warrants of resurvey, in respect to the correction of errors in the surveys upon which they operate, and the including of contiguous vacancy. Previous to taking out any warrant of a special nature, (that is, all but common warrants) the party has, by custom, a right to be informed, upon his application, (but not without) whether any other person has taken a warrant to affect the land which he has in view. In every case of a regular application for a warrant a short entry is first made by the register in his titling book, and the warrant is issued in conformity with that entry, and is afterwards recorded.

The person who first makes, in the office, when (*b*) open for business, an intelligible application for a warrant, is, generally speaking, entitled to the preference, provided that he is prepared to take such warrant, to which last mentioned requisite there is however an exception in the case of proclamation warrants. A person is not prepared to take a common or special warrant until he produces a titling from the treasurer, or demands the warrant on some right equivalent to a titling, of which I shall presently speak. In the case of common warrant there can scarcely be occasion for any contest; but it is otherwise with a special warrant, which requires a location, and this location is not *received* by the register until he sees the authority, or right, by which the warrant is claimed: consequently, a person applying in the land office for a special warrant, without being provided with such authority or right, might be forestalled by another who should make a later application and produce his titling &c. In regard to proclamation warrants, an application in the land office is good without a titling, being necessarily the thing first in order, since the titling is not granted by the treasurer until the register has

(*b*) The Western shore land office is open, or accessible upon application, at all hours of the *day*. Where there has been reason to expect a contention, the hour of six in the morning has been given in direction by the present register to his clerk, for opening the office, and care taken to make it known. This therefore is now the customary hour in seasons admitting of it, and at other times of the year something later. Visits *absolutely unseasonable* such as have occurred, and given rise to discussions, under the former government, are not made to the land office at the instance of any person whatever.

certified that an application has been made, and that the certificate is liable to the warrant demanded. Warrants of resurvey, and of escheat, in respect to which no previous payment to the treasurer is requisite, come simply under the general rule of being grantable to the first applicant. According to the usage of the office, particularly as established in some instances by the late register, an oral application is preferred to one in writing; that is to say, if two persons appear together in the office, and while one offers a paper, containing an application, the other makes and specifies his demand aloud, the latter has the preference, as *the matter* of his application comes first to the *knowledge* of the register: but this rule does not preclude written applications, where the register has had time to inform himself of their contents before verbal applications are made, nor even where the reading of them should be anticipated by verbal demands, if he has them in his hands in the land office. In a case above alluded to, the register, seeing two persons enter the office evidently in contest for the first application, refused to take a paper offered him by one of them, and attended to the verbal application of the other, who accordingly obtained a warrant; and in a similar case the same course would be now observed: but where no struggle of this kind obliges the register to act exclusively upon what he *hears*, written applications for warrants, either delivered or transmitted, are effectual, though certainly subject to casualties, which must be at the risk of those who make them. In regard to the entry on the titling book, which is the first thing done after a regular application, it contains the substance of the warrant, and is, by usage, effectual, although the warrant should not immediately be made out; but no entry is made without being followed by a warrant of the same date. Applications were formerly permitted to lie three months, during which the party had the option of taking his warrant or not. By what regulation this custom obtained I have not observed, and therefore omitted to notice it in my account of the ancient practice, towards the close of which, only, it is perceived to have occurred; but this privilege has ceased since the land office became regulated by law.

The next matter to be noticed is the correction of errors in warrants, (and previously in the titling book) before they are recorded, for afterwards no correction or alteration, of material import, can be made; and, the licence of the office in this particular does not go very far even before recording: but, while warrants remain in this state, the register corrects a casual error alledged to be his own, or a slight error of the party, in the naming of lands, &c. always confining such corrections to what was evidently intended in taking out the

warrant, and in no case inserting locations absolutely new, so as to give privileges which the warrant did not contain at the time of its date, for alterations of this last kind a regular method is practiced, which may be called the *amendment* of warrants.

The privileges of parties in this particular are so large, that there are few changes which may not be made in a warrant while it remains in force ; but the essential difference between these and the corrections beforementioned is, that a new date is given in respect to the amendments, so that if a person obtains a new or an additional location, the privilege arising from it does not refer back to the original date of the warrant, so as to defeat rights intermediately acquired by others, and which interfere only with such new location. Upon the application of a person, previous to the execution of his warrant, for an amendment or change of location, the warrant must be produced, and the register, after an entry in the titling book, endorses on the warrant a direction to the surveyor to execute the same according to the location indicated by the party ; which direction, or *leave*, as it is called, is dated, and regularly recorded in the warrant book, a note thereof being also made in the margin opposite to the record of the original warrant. In respect to special warrants, to which the preceding remarks more particularly apply, the location may either be amended by a more ample or exact description of the land originally meant to be affected, or it may be wholly changed, by substituting a new location : in which case the former one, (for at present there can be but one location to a special warrant) is considered as abandoned, and the vacant land, (if there is any) on which the warrant before operated is subject to be taken by other warrants. In regard to warrants of resurvey, a party may, at any time before execution, obtain a licence or direction to the surveyor, to include in the resurvey lands not before specified ; such leave being endorsed and recorded, as beforementioned ; and this may be repeated as often as the party thinks proper, so that the warrant does not, by successive amendments, exclude the whole of the lands for the resurvey of which it was originally taken, and become essentially a new warrant. To be more clear, a warrant of resurvey must be executed, in some measure, according to the original location, and not be removed to a place or situation altogether different from that which was first intended—But, the location of a special warrant may be changed at pleasure. Proclamation and escheat warrants admit of no amendment whatever. Warrants of this kind are not renewed, as they formerly were, by giving further time for their execution ; the laws having assigned what is deemed a sufficient time, in the first instance. When

a party has omitted to execute his warrant, but means still to make a survey, or to keep up the binding effect of his locations, he takes a new warrant, commonly about the time when the other expires, but sooner or later, as he pleases; risking, in the last case, the intervention of other warrants. In regard to the right of persons to take warrants for lands which appear to be already affected by others, it is sufficient to say that this right is not judged of by the register, who issues any warrrant that may be demanded, after he has truly answered all fair enquiries. A proclamation warrant, indeed, does not issue unless the certificate is liable; for the register must declare it to be so before he obtains his authority for granting the warrant.

It is time to notice the rights, other than immediate titlings, upon which common or special warrants may be obtained from the land office, and which consist, generally, of warrant unexecuted; of composition paid, and the effect of such payment lost, by the vacation of a certificate or grant, or by a certificate's not being returned in time, either in the first instance, or after an order for correction; and lastly, of deficiency found in original tracts, upon resurvey, and here it is necessary to recur to a principle formerly stated, and which is indeed the great hinge of the business of the office; namely that money paid into the treasury as the price of vacant land is a deposit, the condition and benefit of which is to be realized in the land office, consequently, when that condition or proposed benefit fails of being obtained in the first or any subsequent instance, the party is entitled to some other method of securing it. In other words, warrant unexecuted, or not prosecuted to its final purpose, is so much money which the owner has in the hands of the state, and which, though it cannot be drawn back in kind, is to be made good in the way proposed by the deposit. A person, then, who posseses in his own name, or by assignment or succession, warrant, either common or special, which, in the whole or in part, remains unexecuted, and unapplied, may, upon producing such warrant, obtain, for and in lieu thereof, a new common or special warrant or warrants, without the further agency of the treasurer; the old warrant being delivered in and cancelled if all of it which remains unexecuted is thus replaced by new warrant, or, if only a part, returned to the owner, with an endorsement specifying the quantity so cancelled and replaced, and a correspondent entry is, in either case, made on the record. All this without any limitation of time whatever.

When a certificate is vacated, upon which caution money in taking the warrant, or composition upon return, or both, have been paid, the money is in like manner understood to stand to the credit of the party, and he is entitled to warrant

therefor, which, however, is granted upon an order of the chancellor, or judge of the land office, accompanying the act of vacation: and when a certificate is not returned within the time prescribed by law, either in the first instance, or after it has been ordered for correction, so that it becomes, *ipso facto*, vacated, the party is in like manner entitled to warrant for his payments, without any special order for that purpose.

When, on return of a certificate of resurvey, it is certified by the surveyor that the original tracts fall short of the quantity granted, or, in the case of parts of patented tracts, the quantity for which such parts were transferred and conveyed, the party is entitled, on application, to warrant, common or special, for the deficiency. In all those cases, assignees or legal representatives, have the same rights as principals. The provisions of the law upon this subject are highly favourable to landholders, as the deficiency in every distinct tract or part of a tract is made good by the state, while surplus land in other tracts or parts of tracts is not accounted for, even when found in the same resurvey. It has been already remarked that where allowance for deficiency is claimed on a resurvey upon the Eastern shore, a certificate is required from the Western shore land office that such allowance has not been already made in respect to the same original surveys; which certificate the last mentioned office, as possessing the ancient records, is supposed competent to furnish; but that some difficulty exists in furnishing certificates so precise as the law requires. There is, in fact, as the records and alphabets now stand, no effectual way of ascertaining, in all cases, whether deficiency has been allowed or not.

Having stated all the grounds, authorities, and rights, upon which warrants are obtained from the land office, I am next to notice the uses that may be made of them, independent of carrying them into immediate and full execution according to their tenor, and principally in relation to division and assignment: in doing which I must recur to original principles, in order to shew by what steps the practice of splitting warrants, by assignment or otherwise, has come to the state in which it is at present found. As to simple assignment, it was always permitted, and I cannot say that there was ever a time when *parts* of warrants were not assigned; but, the extent to which that practice has ultimately been carried is not countenanced by the original rules of the land office. The instructions of the proprietary to Charles Carroll esq. of the 12th of September 1712, shew, at once, what had begun to be practiced, and what was prohibited for the future; and these instructions contain, in my opinion, the true principle by which the dividing of warrants for different surveys ought to be restricted. The late chancellor, in the case of Prather *vs.* Pra-

ther has laid it down, not as a legitimate principle, I presume, for his subsequent reasoning shews that he does not intend it in that sense, but as a current and tolerated practice, that a person possessed of one acre of land warrant may upon that authority make a survey of any extent whatever; admitting at the same time that if such person's right should be questioned, or come in competition with a right acquired under an entire warrant, &c. it would stand on insecure ground. This is, perhaps, the best footing upon which the chancellor could place the matter, unless he undertook to controul and regulate it by his decisions; but it is not the footing upon which it ought to stand. I have stated, as a general rule in the ancient practice, that warrants were not to be exceeded. I am supported in this position by various authorities, and among the rest, by the instructions to surveyors, which directed as they do even at present, that a warrant should "*by no means*" be exceeded, except it were for the purpose of taking in all the vacancy lying between patented or surveyed lands. This shews that the privilege of surveying any quantity of vacant land whatever, even under an entire warrant, was not and is not recognized: for the present instructions are, in this article, copied verbatim from the former ones. I have stated that a survey, if it had exceeded the warrant, was to be annulled, or, if done without the direction of the party, to be corrected. In order that I may not seem to lay down mere dogmas, in a matter which subsequent practice has made so questionable, I will mention explicitly that this rule, in the positive form in which I have given it, is drawn from a small collection of notes concerning the practice of the land office, found in a book of precedents, &c. in the hand-writing of the late Thomas Jenings, esq. who had in his youth been a clerk in the land office. They refer, necessarily, to a late period of the provincial government: I have considered them, therefore, when corroborated, or not contradicted, by the records, as good authority relative to the practice, so far as they go. But, it has been acknowledged, on more certain, and I suppose later authority, viz. the instructions of 1768, that cases were contemplated in which a warrant might be exceeded, and patent still permitted to issue. In short, it never was, I believe, in the power of the proprietary government, consistent with its views in respect to the sale of vacant land, to prevent warrants from being in some degree exceeded; but the privilege of exceeding them at pleasure was never recognized. How then should it be understood at the present day, when no law or regulation sanctions it, that a person getting hold of the smallest particle of a warrant may proceed as if he had the most express authority for making a large survey? But,

the practice has arisen, and the question is by what means it has done so: I presume it is in the following way: The instructions to surveyors, while they direct positively that a warrant shall not be exceeded, except in a given case, make that case to be where a survey cannot be confined to the limits of the warrant without leaving out adjoining vacancy lying between patented or surveyed lands. The original intention of this was that small, inconvenient, and unsaleable slips of land should not be left on the proprietary's hands: but now, all vacant land, with little exception, lies between, or is surrounded by, patented tracts: and, under this proviso in their instructions, the surveyors conceive themselves at liberty to take in all the land they can find, without regard to the quantity expressed in the warrant. The main part of the instructions thus becomes a nullity, and the exception to a positive rule supercedes the rule itself. But, to return to the splitting of warrants into minute parts, the chancellor, in the case aforesaid, admits that a survey made in this way, or under a warrant already expended, would probably, *on caveat*, have to give way to a survey made under less doubtful authority; and here I must leave the matter; for, it is not for me to judge whether the rules of the land office are to rest on their own basis, or on their accidental vindication by parties interested in enforcing them. But, in laying down the actual rules of the office, I cannot state it as an acknowledged and legitimate rule that persons may, by assignment or otherwise, divide a warrant into as many parts as they please, and institute so many distinct surveys, without regard to the quantity expressed in the warrant. I can only admit it to be a common practice, which the examiner does not question, and which the judges of the land office do not notice, except in the particular cases in which it comes before them by caveat. What I consider as regular and allowable divisions of warrants are those which are indicated in the instructions of 1712, before referred to.

The instructions of 1768 do, it is true, admit of a party's making several successive surveys until his warrant is expended, but do not give a shadow of authority to the practice of splitting warrants by assignment, or even without assignment, for the express purpose of originating, at one and the same time, a number of different surveys, and with the intention that each of the divisions shall be exceeded. As to the privilege of exceeding warrants, or parts of warrants, considered in itself, and without reference to the absurd divisions and assignments which have been described, I have stated the former practice by way of information, chiefly to those who have the regulation of such matters, and have endeavoured to shew how it has advanced to its present unlimited state.

The expediency of it I do not presume to condemn, or to reason upon; but, the practice ought to be made conformable to the instructions, or the instructions to the practice.

I have spoken hitherto chiefly with an eye to common warrants; but, the abuse, as it may safely be called, of the reasonable privileges of division and assignment has extended also to special warrants. In respect to these a check has indeed been lately interposed in the order of the governor and council of the 31st of July 1805, directing that the registers of the land office shall not thereafter issue any special warrant with more than one location. The circumstances that gave rise to, and that attended, this order cannot be fully explained without a detail too minute and too personal to be with propriety exhibited. It is sufficient to state that the late chancellor, observing by the papers submitted to him in a particular case, that uses were made of special warrants such as he considered wholly irregular and unauthorised, addressed a letter to the register of the Western shore land office, in which, after condemning in the most decided manner the practices in question, as well as the splitting of common warrants, already described, and expressing some doubt whether he, in his capacity of judge of the land office, could with propriety abolish those abuses, he recommended it to the register, as the most eligible course, to represent the whole matter to the governor and council, giving him permission in that case to forward the aforesaid letter as part of the representation. The register pursued the chancellor's advice, and the order above referred to was passed in consequence: but, what concerned the splitting of common warrants appearing, as the register was informed by a letter from the council, to require some additional and explanatory instructions to surveyors, the consideration of it was postponed; and, perhaps, because the attention of the board has not again been formally called to the subject, it has never since been taken up.

Previous to this regulation a person apprized before hand of cultivated vacancy in ten different situations, might procure a single warrant with as many different locations, and sell them out to the same number of persons, each of whom might make a survey, return a certificate, and obtain a patent, for more land than the entire *(c)* warrant originally expressed.

(c) I do not mean to say that a warrant never was issued under the former government with more than one location. I have, by a close examination, discovered a few cases of special warrants with several locations, within about the last ten years of the proprietary government. I shall not attempt, here, to account for this, or for other irregularities in the manner of obtaining warrants. A person *of consequence in the government* has received warrant upon his letter to the clerk, promising to pay *when he should come to Annapolis* that caution money which, by the most

I affirm that there is nothing in the ancient practice or in the forms, laws, or regulations, old or new, that gives the smallest countenance to this procedure. The fair accommodation of the people, and the policy of the state, I agree, ought to be consulted without regard to the interest of persons holding public offices; but neither of these can be promoted by this kind of brokerage in land warrant. If persons are enabled at a small expence to procure what will serve for a number of surveys, they set to work as many others as they can find customers for the parts into which they split the original warrant. It is the interest of the state to sell its vacant land: but it has always been a matter of public policy to impose such terms as may keep the community in a state of quiet and security, in respect to their landed possessions, until an object is discovered sufficient in itself, in point of value and certainty, to attract the attention of some individual, without his being prompted by professed discoverers to embark in the business of surveying. A man obtaining a warrant, or what is equivalent to a warrant, for little or nothing, is encouraged to make an attempt in a doubtful case: He fails;—but his neighbour is disturbed; and put to expence, or at least to trouble, for which he obtains no recompense; for, the judge of the land office, who awards costs against the litigious adversary, cannot also decree damages. I have ventured here upon a delicate subject, and shall not pursue it further. The pecuniary interest of the office is, and ought to be, out of the question; but the means of keeping intelligible, full, and satisfactory records of the application of warrants, and of preserving a regular channel of evidence, whereby to derive titles from their sources, is a matter of consequence to an officer who desires to perform faithfully and efficiently his duty to the public; and this is rendered not merely difficult but impracticable by the abuses that have been here described.

Agreeably, then, to the existing regulation, the propriety and expediency of which could be shewn by a variety of reasons not advanced here, a special warrant cannot be *divided in the office*, by several distinct locations: but, it is not certain that these warrants do not continue to be divided by the surveyors, as an idea seems to prevail that what is confessedly unlawful in itself may nevertheless be done by way of experiment, and prosecuted to effect, provided that no person is interested to question the proceeding: accordingly, an instance might be adduced of a person's caveating a certificate

positive directions of the proprietary, and the standing rules of the office, was to be paid before obtaining the warrant. Clerks of the old land office, (I do not speak of the very latest period) have been openly in partnership with great land mongers.. A legitimate rule or authorised practice is therefore not to be inferred from a few cases of any sort, in opposition to the *general* practice, under the former government.

because the survey was made under a location not originally authorised by the warrant, who had himself by assignments of parts of special warrants instituted several surveys in the same way, which, for want of objection by caveat, had been prosecuted to patent. It is by instructions to surveyors, alone, and by enforcing their due observance, that this matter can be remedied. My position is, simply, that all locations on cultivated lands should be made in the office, and in no case be made or changed by the surveyors; and this leads to the consideration of what may rightfully be done with a special warrant if the owner cannot or does not chuse to execute it according to the first location.

In the first place he may as often as he pleases obtain a new location in the office, in the way of amendment, as before described; the new location being endorsed, and a regular entry of it made on record; for which service, as for many others, no charge whatever is made.

If the party, not finding land where he took his location, chuses to use his warrant without a new location he uses it as a common warrant. It is laid down as a maxim by the late chancellor, in several of his decrees, that whatever can be done by a common warrant may be done by a special one—The position is, perhaps, somewhat too broad; for a special warrant is directed to the surveyor of a particular county, and it may be doubtful whether another surveyor can execute it. The chancellor has also, in the case of Beatty *vs* Orendorff, stated that a person may, under a special warrant, take either the land therein described or any other vacant land, not affected by another warrant; and here he does not qualify the terms *vacant land* by saying that in the last case it must be uncultivated—such as might be taken by a common warrant. The opinions of Mr. Hanson are entitled to the utmost respect, and I should be very slow to controvert any thing that he had positively declared to be the law of the office, but there is a danger in attempting to expound in so few words as the chancellor has employed in this instance all the properties of a special warrant, especially when the exposition comprehends points which are not involved in the matter immediately under consideration. The case which has been mentioned did not turn upon the question whether the caveator might, upon abandoning his first intention, have surveyed other cultivated land without obtaining a new location; but whether his special warrant could be deemed to have *bound* land which was not therein sufficiently described. The chancellor, in prefacing his reasoning on the main question by a brief account of the nature and powers of a special warrant, did not, apparently, attend to all the distinctions which that subject required; and, as he has in no other instance at-

tributed to a special warrant the power of retaining its privilege in regard to cultivation after it had in other respects assumed the character of a common warrant, I must suppose his opinion to be such as he has in repeated instances declared it,—that a special warrant, if it abandons the location received in the office, may be used to all the purposes of a common warrant,—and no more. So far as to the principle. In practice it must be acknowledged that special warrants, and even parts of such warrants, have taken cultivated land, without regard to location made in the office.

As to warrants of resurvey, of proclamation and of escheat, they do not admit of division, nor do the two last admit of any material change or amendment, but all of them are capable of being assigned; the assignee, in the case of a resurvey warrant, being a person who possesses such a title in the lands to be resurveyed, or some part of them, as would enable him to execute such warrant if it had been taken in his own name. There can in fact be little occasion or pretence for the assignment of a warrant of resurvey, unless to accompany the title of land transferred after the warrant is taken out; for it confers no right, and cannot be used to obtain any right, to vacant land not contiguous to the originals therein mentioned; and the rule which permits no person to make a resurvey except on lands actually belonging to him is as strictly in force as it was at any former period. It is true that persons are permitted to make resurveys upon lands lying on certificate compounded on, and to which they have not acquired a legal title; but they have the best title which has been acquired; and it is made a legal one before the design of the resurvey takes effect; that is, before patent of confirmation issues.

Warrants of escheat, and proclamation are, as has been said, simply capable of being assigned or transferred from one person to another, and must either be executed on the land they were taken to affect or become void. But concerning the last mentioned warrants some further remarks are here requisite. The section of the act of 1795, ch 88, which regulated the issuing of proclamation warrants is, like many other provisions of the acts of assembly relative to the land office, inaccurately or obscurely worded. It ordains in the first place that any certificate of survey or resurvey returned to the office, which includes vacant land, and is not compounded on agreeably to law, shall be liable to be affected by a proclamation warrant by any person who shall apply for the same—comprehending of course (contrary to the rule of the former government) the owner of such certificate; but upon the condition that, previous to the obtaining such warrant, one tenth part of the vacant *land* contained in the survey be *compounded upon*, and *paid* to the treasurer of the particular

shore. It then gives a day of exclusive privilege or preemption to the owner of the certificate, "for" (obtaining) "*a pro-*
"*clamation to pay and compound on the same*" This does not mean complete payment and composition on the certificate, for in that case no *proclamation* as it is here called, would be necessary; but it intends that the owner shall have one day in exclusion of other applicants, for obtaining a proclamation warrant on the terms before specified, that is, on paying one tenth of the composition due; and so far as relates to the first instance of proclamating a certificate this privilege of the owner is not disputable. But the practice has been for the owner, without making any return under his proclamation warrant, repeatedly to proclamate his original certificate, and in this case the day of preemption has also been allowed, but I think improperly; for the law speaks of one day after the expiration of the *warrant* under which the survey or resurvey to be proclamated shall have been returned: the party not having made a return under his proclamation warrant, the warrant referred to must be that under which the original survey or resurvey was made, and which in the second instance of proclamating must have been a year past, instead of a day, out of force. The exclusive privilege then, in my judgment, does not attach to the owner of the old certificate, although he may like any other person proclamate it anew as soon as it is released from the operation of his former warrant. I have dwelt upon this point because every thing that regards preemption ought to be clearly understood, and to stand upon certain ground: but as the practice has been to allow the day of preemption in all cases, I think it proper also to state that it will so continue until the matter is regulated by competent authority. The point has been noticed here because it belongs to the subject proposed, to wit, the resources possessed by the holders of warrants, where they are not executed according to their tenor.

A further use to be made of warrants or parts of warrants remaining unexecuted is the applying them to the payment of composition due on certificates. The privileges allowed in this particular are considerable, but they are still under some restrictions. Warrant unexecuted will pay for composition, or rather for caution, due on vacant land surveyed and returned under common or special warrants, or warrants of resurvey; and will serve for the final composition under a proclamation warrant, though not for the one tenth to be paid in the first instance. It will not pay for escheat land, nor, in any case, for improvements. The one tenth paid on taking out a proclamation warrant avails the party if he chuses in due time to make a return and pay the remaining nine tenths: but, if instead of this he lets his warrant run out of date, and

only renews his hold upon the first certificate by another warrant, obtained on the same terms, his former payment is forfeited ; it being plainly the intention of the law to tax, for the benefit of the state those proclamation warrants which are taken merely for delay, or rather for mantaining an exclusive controul over lands, without fairly purchasin and settling them. The idea that these annual compositions for a new hold upon the land were intended in the nature of installments is contradicted by proceedings of the legislature which took place within two years after the act regulating the subject of proclamation warrants. I speak here of two resolutions, passed in the year 1797, by the first of which it was provided that the time prescribed by law for making return of certificates should, in respect to resurveys made under warrants theretofore issued to affect lands in Allegany county, be extended by an addition of six months, and that upon return of the certificates within the period so enlarged, the parties interested therein, or any of them, might enter into bond, with securities to be approved of by the treasurer, for the payment of the composition due thereon in three equal and annual installments, with interest from the time of return ; that, in default of returning certificates within the time thus extended, the lands should be liable to proclamation, as in other cases of failure to make return and to compound ; and that where the installments on such bonds were not regularly paid, *scire facias* should issue, for recovery, against the persons, lands, and chattels of the obligors, and the lands affected by such surveys be bound for payment of the composition : by the other a similar provision was made in respect to those surveys, before described, of which the certificates had been examined and returned to the office : the parties to install before the first of June then following. Here then the subject of installment was immediately under the consideration of the general assembly, and placed upon a footing which evidently shews that it had not been in contemplation to allow the payment of composition by installments of tenths upon successive proclamations. Those tenths are in fact an interest, or revenue, which the state draws from lands thus surveyed, and taken out of its immediate power, without being paid for. It is probable that cases of individual hardship may have occurred under this singular scheme of paying an annnal premium for a privilege in many instances attended with no ultimate benefit ; but the law and its settled interpretation are such as I have stated them.

Deficiency found on resurvey cannnot be applied *directly* to the payment of composition, except by being set off against the vacant land included in the particular resurvey in which such deficiency is declared. In other cases warrant may be

obtained for it, and that warrant applied. For the purpose of the *application* here spoken of it is immaterial whether a warrant is in force or out of date. So far as money has been paid for primitive warrants, and the object is not in some way realized or made good, the claim subsists, and passes to assignees, heirs, or representatives, without limit. If the party desiring to apply unexecuted warrant offers what is sufficient for the whole composition due on a certificate, and there are no improvements returned, the transaction ends in the land office, without the certificate's being taken to the treasury. The warrants, or parts of warrants (for there is here no limit to assignments) are surrendered up and cancelled, and the application is made by endorsement on the certificate. If the application goes but in part towards the composition, the certificate is taken by the party to the treasurer, who receives what still remains due, and endorses his receipt. The preceeding remarks are presumed to have shewn all that can be done with warrants not carried into execution, and also to contain all that remained to be said on the subject of composition.

The matter that next claims attention is the duty of surveyors in the execution of warrants ; but, of this I shall not speak much at large ; first, because I have already given a general account of those duties in stating the provisions of the laws on that head ; and secondly, because I am not sufficiently informed of the actual modes of proceeding adopted by those officers in cases where doubt or difficulty may arise, and should deem it unsafe to ground a set of absolute rules or maxims upon the letter of their instructions, which I have already stated to be in many points impracticable, and in others not duly observed. In general therefore I think it best to refer to the instructions themselves, which, though defective, are the authority from which the duties of surveyors are to be collected. One of the few articles of those instructions upon which I shall make any remark is that which directs what is to be done by a surveyor upon receipt of a common warrant ; to wit, that, besides the date of the warrant, the time of its being presented, the quantity it expresses, &c. he shall note, in a book to be kept for the purpose of those entries, the place at which the party obtaining such warrant locates the same. I will not suppose that this location must absolutely be made, or that, if made, it must necessarily be a precise one. A common warrant, however, cannot be executed without some direction to the surveyor concerning its location ; I presume therefore that a location of some kind is generally made upon depositing a common warrant with the surveyor, or at least, as soon as any entry of its receipt is made in his

book ; and if such location is sufficiently precise, according to the general rule on that head, it binds the land therein described ; but, if vague, merely enables the surveyor to proceed ; and the land is, in that case, secured by the actual survey, and not before. The object of all location, previous to survey, is to bind the land therein described from the operation of other warrants. The date of a common warrant is, in this respect, immaterial, except that in applications at the same point of time for the same location, the elder warrant ought in reason to be preferred. In a word, locations of common warrant by the surveyor are good and binding for its expressed quantity of uncultivated vacant land, sufficiently described, and not covered by previous location either of common or special warrant, for the latter may bind land cultivated or otherwise. It is proper here to remark that the instructions to surveyors, while they prescribe the form of location of common warrants, do not say a word concerning the location of special warrants ; that being a matter which is always to be done in the land office. If it is said that the surveyor, without making a new previous location, may make an actual survey of cultivated land not designated in the special warrant, I answer that no written rule, from the first establishment of the land office to the present day, gives that privilege, and that the practice is therefore unauthorised. It, in fact, defeats a very important end of location, which is, not solely to benefit the party making it, but also, to inform other persons of the lands already appropriated, and, by consequence, to assure them in some degree of those that are yet free. A person, satisfied by enquiry that no warrant has been taken to affect a particular piece of land, prepares to take a warrant for that purpose ; but before he reaches the land office, an actual survey is made of this land under a warrant obtained to affect other land, and the location of the office is superceded and defeated by the surveyor. It is true that persons may in other ways be disappointed in their views, and that there are many remedies or resources where they do not obtain the precise land intended : but those disappointments ought not to be multiplied by a licence not founded either on positive regulations or on reason and public convenience, and tending in a strong manner to confuse and invalidate the regular proceedings of the office.

In regard to the location of special warrants, on which the surveyors are called to act, and upon which they must sometimes exercise their judgments, the rule of interpretation laid down by chancellor Hanson in the case before cited of Beatty *vs* Orendorff, and in other decrees, is perfectly clear and just ; to wit, that the land designed to be surveyed should be designated by such precise marks and references as that

the description should by no means be equally applicable to other lands. It is true that a surveyor is not to refuse to execute a special warrant because the location is loose and imperfect. The warrant is presumed to have some location, though vaguely expressed, and the party may, I conceive, in this case, aid, though not contradict, the apparent intention, by his declaration to the surveyor: especially as the survey is not conclusive in favour of him who obtains it. Nevertheless, as the first certificate is an advantage, if a junior warrant with a better location is at the same time presented, although the surveyor may not refuse to act on the imperfect location if it can he made any way intelligible, he may also, it is believed, make a survey of the same date under the more exact location. This is however, a matter upon which I am far from pretending to lay down any absolute rule, and the dates of all special warrants are, if possible, to be respected by the surveyor, there being a resource if the survey should be found to have been made under a warrant not applicable to it. It is not certain, moreover, that a survey would be annulled by the judge of the land office merely for want of an exact location in the warrant. This is perhaps a case which would come under a maxim that has sometimes been suggested in the land office, but which ought to be received with a good deal of allowance, namely, that an actual survey is equivalent to a location. Where a well supported interest appeared in opposition to such a survey the case would, I suppose, be doubtful.

The binding quality of a special warrant requires to be considered also in another aspect. As to quantity, the warrant binds no more than it expresses, although by the present practice, which I do not undertake to condemn, for it merely concerns the state in point of revenue, more may be taken on survey When the expressed quantity of a special warrant does not embrace all the vacancy which might be taken under its location, a subsequent warrant may, before the first is executed, bind the remainder, and restrict the other to its stipulated quantity: but, if the second warrant should also fail to cover the whole of the vacancy not bound by the first, there arises a question which of the two warrants has the privilege of taking the surplus or residue. This seems to be determined rather by the necessity of the case than by any set principle. The elder warrant will it is presumed be first executed, and as there can be no certainty that in taking more than its quantity it will leave enough to gratify the junior warrant, it must be restricted to that quantity, and the other will of course have the privilege of taking the residue. If on the wilful delay of the owner of the senior warrant, the other should be first executed (for every holder of a warrant has a

right to have it executed within a reasonable time after it is delivered for that purpose) this warrant must, for the same reason, be confined to the quantity which it expresses, and the privilege as to the rest will remain with the first warrant.

The privilege of warrants of resurvey extends, as I have frequently had occasion to observe, to all the vacant land contiguous to the original tracts or parts of tracts to be resurveyed, or rather to those which are actually resurveyed, for the practice admits of the surveyor's leaving out any part of the lands mentioned in the warrant, a reason being generally assigned for so doing; and the privilege, so far as it depended on the lands so left out, cannot be retained. With this reservation, the right to all adjoining vacancy is now held to be absolute, always supposing that it is not affected by prior locations, for, these even a warrant of resurvey cannot supercede. Warants of escheat and of proclamation have, except as to amendment, exactly the same privileges as warrants of resurvey, for they are essentially of that nature. It is proper here to observe that, according to the form of an escheat warrant, it is not absolutely invalid if the land should be found to be escheat not by the death of the party therein named but of some other person, and at all events this circumstance is not to prevent its execution by the surveyor if the land itself be sufficiently described; but it is not for me to say how far the right acquired under a warrant in any degree defective might be sustained, on contest against a more perfect warrant, in favour of general expressions in the form. It must be acknowledged, however, that warrants of resurvey are generally issued in an imperfect form, in not reciting the dates &c. of the original grants; that this has been the practice for fifty or sixty years back, and that it has never to my knowledge been made a ground of objection to the resurvey. Frequently also, when parts of tracts are to be resurveyed, the quantities of those parts are not recited in the warrants. All this depends on the party, who may furnish the particulars so omitted, or direct searches for the dates and other circumstances of the originals, if he thinks proper. These omissions are supplied by the surveyor, by reference to the patents and other title papers, when he executes the warrant; and the blanks left in the record for that purpose are filled accordingly before patent of confirmation issues.

The exact practice of surveyors in ascertaining titles, previous to the execution of a warrant of resurvey or of escheat, I am not acquainted with. I presume however that they use all practicable means for that purpose. In former times titles were generally set forth at large in the petitions for warrants, and were accordingly recited in the warrants themselves. In more advanced periods the derivation of titles

from the original patents, necessarily became more difficult, or at least more lengthy, and probably upon that account it was dropped in the office. By instructions heretofore inserted, the surveyors were authorised to resurvey parts of tracts upon the evidence of conveyances; and these are, of course, the evidence on which they must still act. Upon the whole, I suppose that the surveyors satisfy themselves that the titles exist, as set forth in the warrants, and that they are not bound to execute a warrant containing a palpable misrepresentation in this particular. In regard to parts of tracts there is certainly something amiss relative to the making good deficiency, as it can only have been intended to guarranty the quantities of the original tracts, and a part may be deficient of the quantity expressed in the deed without the whole tract's being so. This however is a subject upon which I do not think proper to enlarge; and being so imperfectly informed as I am concerning the real methods of proceeding of the surveyors in reference to the interest of the state, and indeed in the execution of their duties generally, further than may be inferred from their instructions, I shall here close this particular head of enquiry, although a multitude of points may arise, in the execution of warrants, which it would be proper to examine if I could with entire confidence state either what the practice is, or what, as the instructions now stand, it ought to be.

What concerns the return of certificates has been sufficiently explained. When a certificate is in the office it lies six months, after being compounded on, open to objection by caveat. A caveat, however, it is well to repeat here, may be entered before return; in which case, it is directed against a certain survey, made or supposed to be made under a given warrant; but caveats in this way are not common, because the party by such anticipation shortens the effectual duration of his caveat, which, in every case, is confined to a twelvemonth from the time of entry, unless the judge of the office, under special circumstances, gives it a further continuance. In the case abovementioned a provisional entry is made by the register in the margin of the warrant; and no order, according to the general practice, is taken for trial until the return.

When a certificate is in the office, as before mentioned, a caveat is upon application, or on the ground of the previous memorandum, entered in form in the docket of the office, and endorsed on the certificate, which from that time becomes incapable of being patented, to any other person whatever, until the caveat is disposed of by the judge, or expires by law. It is not necessary, nor very common, to assign the particular cause of caveat at the time of entry, but it may be done, at the pleasure of the party.

When a caveat is regularly entered it is the most natural course for the caveator to apply to the judge of the office for the necessary orders for bringing it to a hearing. On the application, however, of either party, a day may be fixed for that purpose, which is regulated by the situation of the land, the convenience of the parties, or other circumstances, in the discretion of the judge; there being no stated terms for trials in the land office. If the caveator has taken no step for a hearing, it is possible that the other party may have no knowledge of the matter until he applies for a patent, which it is *presumed* he will do when his certificate has lain the requisite time; though, in practice, it is possible that a caveat may have been entered, and suffered to expire for want of prosecution, without the owner of the certificate's ever being informed of the circumstance. In some cases the matter in dispute is compromised or arbitrated without a trial, and the caveat, in conquence, withdrawn, or else ruled good by consent. In a general way no order is taken on a caveat without application, though it is doubtless in the power of the judge, upon information from the register, of the entry of caveats, to assign times of hearing, and direct the necessary process. When, at the instance of either a party, a day is assigned for hearing, subpœna issues from the office of the chancery court, or on the Eastern shore from the land office itself, to the other party, summoning him to appear before the chancellor, (or judge) in the land office, to maintain or to answer the caveat, as the case may be: The party taking out the subpœna, which is issued from the chancery office as a matter of course upon the view of the order for hearing, attends to its being duly served, which may be done either by the sheriff or by any other individual, the service being in the latter case proved by a special affidavit. The summoning of persons, as witnesses, though authorised by law, is not practiced. Instead of this, an order passes, (as also directed by law) authorising either party to take depositions before a single magistrate, on a previous notice, generally of from two to six days, given to the other party, that he may, if he pleases, attend;—which depositions, the order declares, may be read in evidence on the trial. Order is also given, if desired, to the surveyor of the county, to lay down, and return a plot or plots, of any lands that he may be directed by either party so to lay down, for illustration of the matter in dispute. The authority for this last proceeding seems to be grounded on the act of 1789, ch. 35, which provides that disputes in the land office shall be decided on the principles established in the chancery court, &c. and directs the manner of executing orders for the laying down lands for illustration of any matter relative to a cause depending in that court. It must, however, have been al-

ways a power incidentally belonging to the judges of the land office, as it would otherwise have been impracticable for them to form any judgment upon questions of location. In regard to the serving of the subpœna, and orders, which are generally, in the first instance, taken out together, and especially as to the last, the service by a private person has been the most common, and has been preferred, on account of the more satisfactory form in which it is, in that case attested. The sheriff merely returns a subpœna with his endorsement "*served*," or "*summoned*," on the day of :— from which it does not, with certainty, appear that the party designed to be summoned has seen the subpœna. The private individual employed for that purpose, makes a correct copy of the subpœna; delivers the original to the person summoned, and then, by an affidavit, subjoined to the copy, he proves that, on a certain day therein named, he delivered the original, with the great seal annexed, of which the writing above or preceding the said affidavit is a true copy—and he proceeds in the same manner in respect to orders of the chancellor, or judge, of which orders attested copies are furnished for that purpose from the land office; that is to say he uses the office copy as an original, and attests the service on a transcript made by himself, as before. In regard to the time of service and return, the law requires (now, in respect to both shores) that there shall be fifteen days, at least, between the date of a subpœna and the day of return, which in the land office, is the day of trial itself. As to orders, the judge directs the time of service, generally, in the first instance, by reference to that of the subpœna, and, in subsequent cases, by limiting particular days, in his discretion. In a general way it has been understood, and the proceedings regulated accordingly, that there should be fifteen days between *the actual service* of the subpœna, &c. and the day of trial. Whatever may be the proper construction of the law in this particular, the judge of the land office will always be satisfied that the parties have had sufficient notice, before he proceeds.

On the day appointed for hearing, it is the duty, as it is presumed to be the interest, of the caveator to appear, in order to support his caveat, which it is not considered the duty of the judge to do for him: and, on his not appearing, or transmitting satisfactory reason for his absence, the caveat may be taken as abandoned by him, and may on the application of the defendant be dismissed; but without such application would probably be suffered to remain until it became inoperative by law. Either on the day of hearing, or before, the caveat may be continued, and a further day assigned, by consent, or on sufficient cause shewn to the judge by either

party, by affidavit or otherwise. The serving, or giving notice, of all new orders rests on the party obtaining them. It would be difficult to state all the circumstances which might be considered as good cause for a continuance, as they must necessarily be in a great measure in the discretion of the judge. The inability of a party, through sickness or otherwise, to attend; a desire to take further testimony; or the necessity of giving time for correction of plats produced for illustration, but found obscure or defective, are among the usual causes of continuance.

As to the continuing of caveats beyond the time prescribed by law for their remaining in operation, which the judges of the land office are authorised to do, "under special circumstances," by the act of 1797, ch 114, it is certainly not every common cause of continuance, or rather of postponement within the year, that ought to be considered among the special circumstances here intended; especially if those circumstances are alledged on the part of the caveator, to whom the time allowed by law ought to be sufficient for the prosecution of his caveat to a final hearing. The circumstances that induce the judge to enlarge the period assigned for the operation of caveats ought be very weighty, for the law has limited the time, and quite liberally enough, as it is double what was finally allowed under the former government; and it was only meant to leave a discretion to be used in extraordinary cases. The pendency of a bill in chancery, for vacating a patent obtained by a caveator, and on the validity of which depended that of his caveat, has been deemed a ground for continuing the caveat in force until the question of vacation was decided. The orders of the chancellor, heretofore inserted, for suspending the operation of the act af November session 1797 on caveats existing at the time of its passage, were grounded upon a circumstance, indeed, of an extraordinary nature, to wit, that caveators were misled by the opinions of counsel relative to the construction of the law;—but, which ought not to serve as a precedent for such extensions; for, persons are to follow the opinions of their counsel at their own risk, and the opposite parties are entitled to the benefit of the law according to its true construction, of which, in the instance referred to, the chancellor appeared to have no doubt. Other general grounds of continuance have also been shewn in the orders of the chancellor upon that subject. In regard to the revival of caveats, after they have expired for want of prosecution, it has not been often attempted in the name of the same persons, and has not been considered admissible, without the order of the judge of the office; but it is sometimes done in other names, and the chancellor, upon being applied to by the register, has declined a positive interference.

Taking the old practice with the new, I am of opinion that caveats ought in no manner to be renewed, except upon special circumstances, which, of course, are not to be judged of by the register of the office. There is another way however of keeping a certificate under caveat longer than the time intended, that is by a second person's caveating the same certificate on which the caveat of another remains undecided. This is permitted in the office, and there would be a danger in refusing it; for the first might be a sham caveat, which, when it had shut out others, might be suddenly withdrawn, and the certificate, however objectionable be admitted to patent. In regard to cross caveats of which some instances will be found in the adjudications, when a person caveats the certificate of another and has, himself a certificate including the same land, or part of it, it is a plain fact that the land is *in dispute*, and the caveator's certificate is marked by endorsement to that effect, and will not be patented until the caveat is disposed of. But as this is not alw ys perceived in the office, it is best for the caveated party to make an express entry of a cross caveat.

It remains to consider what grounds are sufficient to support a caveat. In regard to the entry, it has already been observed that no particular cause of caveat is, of necessity, to be assigned; and where causes are exhibited, it is presumed, they may afterwards be amended. Where a caveator, however, files his cause of caveat, under such attendant circumstances as to make it apparent that he means to advance nothing further, and the said cause is not, even when the fact is admitted, sufficient to prevent a grant, it is supposed that the judge may dismiss the caveat without a formal hearing: but this must depend in a manner upon consent of the party, who might claim a reinstatement of the caveat if his intentions were misunderstood. As to the point of an interest to be shewn by the caveator, on hearing, I shall leave it where the testimony of the late chancellor has placed it, only observing that on a full review of the practice it does not appear to me that there ever was a rule requiring that a caveat should be dismissed because the caveator did not shew an interest in the matter in dispute. I believe in short, that the judge may on caveat, or on an application for patent where there is no caveat, refuse a patent on account of a violation of the rules of the office, or for any valid cause of objection apparent on the certificate; but, where an interest is set up, it appears by decisions that it must have originated prior to the entry of the caveat, or, in the case of a defendant, the means of defence must have existed prior to the entry of the objection. Thus, for example, the validity of a warrant of resurvey,

grounded upon a title obtained after the warrant was taken out, has on caveat not been admitted. As to the circumstances which may, on hearing, be adjudged sufficient to prevent the issuing of a grant, it will not be expected that I should particularize them. The most prominent obstacles to the obtaining of grants may be seen in the adjudications that have been exhibited. Some of them are of a positive and obligatory nature, as, where land, returned in a certificate, was formerly within the lines of an original tract, and has been excluded by the variation of the compass; in which case the law positively directs that no patent shall issue for such land, except to the party claiming under the original grant: or, where the length of a line in a certificate shall not reach the boundary for which it calls, and the line shall not have been actually run; in which instance it is also directed that the survey is, in a certain degree, to be adjudged void. But, in the first case, which is the most common of all grounds of caveat, it has been seen that the matter depends upon the judge's being absolutely convinced of the fact, by proof of the original runnings, without resting merely on the alledged effect of variation: In short, every case depends so much on its particular circumstances, and the discretion of the judge is so extensive, under the general rule of equity, that it would be unsafe for a person writing under no express sanction from existing judges to describe cases in which caveats must absolutely prevail. In this article therefore, as in others, I think it best to confine myself to the general design of this compilation, which is to shew what *has been done* in the land office, from which the reader may infer what would be done in similar cases; for, as the practice rests in so great a degree upon usage, the authority of *precedent* is no where more respected than in the land office. Referring therefore all that relates to valid grounds of caveat to the decisions heretofore inserted, I pass to what concerns the issuing of patents.

When a certificate is examined and passed, returned to the office, compounded on, and has lain six months after composition without being caveated, or is released, by adjudication or by the operation of law, from the effect of a caveat, it is ready for patents, and according to the theory of the system, and indeed the direction of the law, a patent is to be made out by the register, and presented to the chancellor, or the judge of the land office, for his approbation; upon which, and upon its being signed by the governor, it is to be passed under the great seal, and recorded. In regard to the Eastern shore, the law, by particular provisions, requires that the approbation of the judge shall be *certified*, (which is accordingly done by endorsement;) that the register shall, at his own expence, transmit the patent to the chancellor, for his attesta-

tion, and also that, after such attestation, and the signature of the governor, the great seal shall be thereto affixed, "the cost and expence of which seal shall be paid by the register," in such manner as is or may be directed by law, and "collected "by him from the party, with the sheriff's commission for "collection, in the same manner as officers fees are by law di-"rected to be collected." It is also directed, in respect to the Eastern shore, that certificates shall be recorded immediately after patent, and not before, which, though not specially directed, is equally the practice on the Western shore. How far the practice in the land office of the Eastern shore may be to issue patents before they are demanded I am not informed: but from the operation of the same causes, I presume that the practice must be the same in both offices. Patents, then, are not, in fact, issued as a matter of course as soon as the certificates appear to be capable of being patented, for this reason, among others, that as the certificates must lie unpatented for six months after they have been compounded on, there is more than a probability that the owners may have died in the interim, or that they may have transferred their rights in the certificates, by assignment. In the last case there would be a remedy, as the patentee might withdraw his assignment, and pass a deed of conveyance; but, in the other case, the patent would be wholly void. On this consideration, and through respect to general opinion and usage, which seem to have given an option as to the taking of patents, they are not made out until demanded. When a patent is required, if the certificate be free from any apparent objection, and the party appearing to be the owner, either originally or by a regular assignment produced and filed in the office, is stated to be living, the patent is issued and completed as a matter in course; but if the person or persons in whose name the patent is demanded claim by succession, either as immediate heirs or under a devise, written proofs of their claim must be produced, and the matter submitted by petition, accompanied by those proofs, to the chancellor or judge, upon whose special order, and not without, the patent is issued. If the claim is made under a devise, an attested copy of the will must be exhibited. If it is made on the ground of heirship, depositions, taken before a magistrate, are required, stating the time when the owner of the certificate died: the fact that he died intestate, either generally or in respect to the particular land in question, in which last case, however, a copy of the will serves to substantiate the fact, and, so far as the interest of general heirs is to be shewn, these depositions must state the names, and, as nearly as may be, the ages, of these heirs, being, in the first place, the children of the deceased, surviving at his death;—then, the grand children claiming through any of the imme-

diate children who may have died before the father: in short all the heirs, agreeably to the law of descents, existing at the death of the owner of the certificate, and noticing the subsequent death of either of these, and the fact of such last mentioned person's having died intestate or otherwise: and these particular statements must be accompanied by an express declaration that the persons described as heirs are the *only heirs* of the party in whose name the certificate stands, so far as the deponents know or believe. On the authenticity and validity of those proofs, and their effect in relation to the parties entitled, as well as the several interests of those parties, the judge is to determine, and to pass the title of the state accordingly. The ways in which this is done are too various to admit of being particularized, nor can I pretend to point out the exact circumstances under which patents may issue to executors, (*d*) administrators, or other persons, in trust &c. I shall only observe that it is a general maxim that there must be some means of conveying the state's title to vacant land which has been regularly surveyed and compounded on, and that where difficulties exist as to the persons really entitled, or their respective interests, the judge of the land office directs a patent to any uses, and under any trusts or limitations, that the case may require. In some instances the interests of different parties are specified; in others, patent is issued to the uses, generally, of a will therein recited; and where the validity of a will has been considered doubtful, patent has issued to the uses mentioned in such will *conditionally* that it was a valid one, and if not, to the heirs, as tenants in common. As to other, extreme, and perhaps irregular cases, it can answer no good purpose to notice them. There is perhaps no general rule of the office that has not been strained in particular instances, in favour of the principle of equity, the intention of parties, or a supposed necessity of disposing in some way of a certificate lying under perplexed and extraordinary circumstances. It is not, indeed, for a register of the land office (for I write in that character, and under a due sense of the fidelity in statement which it imposes on me) to determine absolutely upon what ought to be adduced as matter of precedent, and what ought not. But it seems idle to lay down particular rules, supported by general practice, and the most authentic testimony, and then to adduce particular cases in or-

(*d*) I take this occasion to mention what has by some means been omitted in its proper place; to wit, that common warrant not executed or located is by law among *assets* in the hands of an executor or administrator, for the payment of debts. Located warrant, and, *á fortiori*, warrant executed and certificates returned, are, on the contrary, (in what exact manner or degree I shall not venture to say) considered as pertaining to real estate and certificates compounded on, and ready for patent, are decidedly of that nature.

der to shew how far they have been stretched or overlooked. To avoid, however, any imputation of concealment, I shall state a few of the strongest cases, from which it may be inferred that the records afford many others more or less questionable. A patent has, contrary to the rule that has been laid down, issued where the party had, in a resurvey, left out the only land originally mentioned in his warrant, other lands having been introduced by successive amendments. Patents have issued under warrants of escheat, and resurvey, on lands apparently different from those described in the warrants. Patents have issued where the certificate bore a date prior to that of the warrant,—and where an original did not appear on record. I speak here of single cases, and cannot undertake to judge whether the chancellor or register was overreached, or some consideration prevailed that does not now appear. But, contrary to an acknowledged principle, a patent has also been issued for the same land, and on the same certificate, on which a patent had already been passed, and was not vacated ; and this was done merely on the ground of a disagreement (in the courses) between the original patent and the certificate. I cite these cases to shew that in the great variety of circumstances to be found in the business of the land office, and the haste (owing to the importunity of the parties) with which it is sometimes transacted, it is possible for the most correct officers to overlook a rule, or to be mistaken in the circumstances of a particular case, and consequently that every thing that has been, in a single instance, done or permitted is not to be considered as matter of precedent.

When a patent is issued, the authority of the land office is understood to be at an end. The patent is recorded before it is delivered : the certificate remains in the office, with the assignments, if any, and the proofs, in case the patent has been ordered on petition, on which the order was founded, except that original papers, recorded in courts, and to which there are therefore permanent means of recurrence, may be withdrawn. The certificate is also recorded with its endorsements, and with the assignment, petition, and order, on which the patent may have been granted : and this, with the necessary entry in the margin of the warrant or warrants applied to the survey, terminates the matter.—Having brought the business of the land office, therefore, to its ultimate point, I shall close my undertaking with a few general remarks.

The legal effect of a patent is to transfer to the party in whose name it issues, either absolutely, or to the uses or trusts therein mentioned, all the right which the state possessed in the land which it describes, and no more. Consequently a patent does not avail against any prior and existing legal title, but it operates against any equitable title until it is vacated,

or the equitable title becomes a legal one, by relation back to its origin. It has been stated heretofore that the title under a patent, when obtained, refers or relates back to the date of the certificate on which it is founded. This doctrine I understand to have been established by decisions in the late general court, and it appears to have been the ancient doctrine of the land office. It is true that, as a question, the land office has little to do with this matter; for it judges only of warrants and certificates; it grants patents, but does not annul or expound them, when granted. And therefore this is not mentioned as a rule of the office, but as a supposed principle of law applicable to questions of eldership, which may come into view in the land office, and sometimes influence its proceedings, but are not there decided. To return to the general effect of a patent, it is *a title*, so far as it enables a party to contend at law for the land which it conveys, and this is all that I shall venture to say upon the subject.

In adverting heretofore to resolutions of the general assembly, I promised to notice, in a future chapter, such of them as might relate to matters of general concern: but, several circumstances have concurred to prevent the full execution of what had been designed in this particular. I found the resolutions, on examination, so numerous, and relating to so great a variety of matters, that the space which I could have allotted for the purpose would have been insufficient for any considerable selection of them; and, another point was the difficulty of making any application of those authorities to my general subject of enquiry, namely, the established rules of the land office. It is needless for me to say that the rules of that office must bend to the authority of the legislature whenever, in cases of apparent hardship, or on any special ground of expediency, that authority is interposed. And, if it is also needless to state the fact, so universally known, that the legislature has granted particular relief in the greatest variety of instances, where the office itself was, under its prescribed limits of action, incompetent to afford any, it must be equally unnecessary to illustrate that fact by examples. There is, in short, no kind of relief, dispensation, or privilege, which the general assembly may not, in its discretion, rightfully extend, and few which it has not extended, to particular persons, on grounds appearing to merit its interference; and there can be no limit, even in reason and justice, to the exercise of this power, except that particular indulgences shall not destroy or affect any rights previously acquired under the laws, and the acknowledged rules of the office; which principle has I believe always been observed on those occasions. If, therefore, the legislature, for instance, by a resolution, directs a certificate to be received into the land office after the time

limited by law, for the return of certificates, it is presumed to do so upon the particular circumstances of the case, and that indulgence no way affects the rule as to other cases. Without derogating, then, in any manner, from the respect due to the acts of the legislature, under whatever title they may be promulgated, I presume that I may leave what concerns the resolutions on this general ground. If it was absolutely requisite that any of them should have been noticed, further than they actually have been, as forming a part of the standing regulations of the office, it has escaped my attention. If other matters should also be discovered to have been overlooked, even after some notice of them had been promised, the peculiar circumstances which have attended the preparation, and also the publication, of this work must be my excuse.

I have now gone through the system which it was proposed to examine, and which consists, in the abstract, in the institution of surveys and resurveys by warrant from the land office; in the execution of those warrants, and in passing titles by public grant to the land surveyed. I have noticed every kind of operation and proceeding connected with these general designs, and have given a faithful account of every thing that, on a very laborious research, I have been able to discover relative to the principles and rules by which those proceedings are governed. To have performed this in a perfect manner, it would perhaps have been requisite that the system itself should be more perfect, and more uniformly conducted: but, at all events, it has been done as well as my capacity and means of information would permit. Here, therefore, I shall close my account of the history and practice of the land office.

APPENDIX.

AT a session of assembly, begun and held at the town and port of Annapolis, on the twenty eighth day of June, in the eleventh year of the reign of our sovereign lord William the third, by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, &c. annoque domine 1699, and ended the twenty-second day of July following. His excellency NALHANIEL BLACKISTON, esquire, governor.

Amongst others the following law was enacted to wit:

[No. 18.] AN ACT ASCERTAINING THE BOUNDS OF LAND.

Whereas at the first taking up of lands in this province necessity constrained his lordship to commissionate such persons to be surveyors as was but very meanly skilful in the art of surveying; and for the windings, courses and turnings of the several rivers, rivolets, creeks and coves, many times, by these branches folding one in another, were unknown to the surveyors, nor, for fear of the indian enemy, then numerous and strong, darst they freely stay on shore to examine the windings and courses aforesaid, but marking some trees by the side of such rivers, creeks, &c. did without further trouble proscribe certain bounds and courses to the several tracts by them surveyed or intended to be surveyed, and the said bounds are generally expressed in such uncertain terms, and being many times contradictions and inconsistant in themselves, whereby it comes to pass that at this time is very uncertain and many chargeable and tedious suits in law happen about such bounds, which are most times (as it were) by the favour and inclinations of jurors, arbitralily determined differing ways in paralell cases. To prevent which, for the future, and that judgment may go more direct, and that neighbours may more certainly know their bounds and avoyd trespassing upon one another, and for the more generall ascerteining the meets and limitts of every particular man's land, then can be no better way then by a law, to put one certien interpretation upon such contradictory expressions ob-

served to be in ancient certificates, and by demonstrating one example of each interpretation in a fair parchment, to be to this act annexed as part of the said act. Wherefore the delegates and representatives of the city of St. Mary's, and of the severall and respective countys of this province, humbly pray that it may be enacted.

And be it enacted, by the kings most excellent majesty, by and with the advice and consent of this present generall assembly and the authority of the same, That if any man or his assignes hold a tract of land lying in the woods, and from the first or other markt tree or end of the line, or otherwise run a certein course and certein number of perches to a bay, river, creek, branch, or beaver damne, which have a constant stream or certein bed of a channell, if the course directs thereto, and the number of perches fall short thereof in such and the like cases, if adding fifty per cent. thereto will reach the said bay, river, creek, branch, or beaver damn, expressed in the said grant, the said line shall be extended thereto as in other cases hereafter, being certein naturall and unalterable bounds; and where the said line intersects the water of the said bay, river, creek, or beaver damn, or run of the said branch, which are or shall be expressed in such grant, such intersection shall be deemed and adjudged the certain prick or point of the said tract of land, but if the said adding of the said fifty per cent. will not reach the said bay or river, &c. expressed in the said grant and such certein number of perches give the quantity of land which, by conditions of plantations, is expressed in the grant of the said land to have been due to him, with his said certein number of perches, and shall not extend his bounds further then his certein number of pearches, to the prejudice of any later survey, notwithstanding any gift, grant, or patent of confirmation granted or made after the date of any certificate of latter survey. And if a tract of land by a river, creek, or branch, side and from any markt tree or end of line, run a certein course and number of perches up the river, creek, or branch, to the head of the said river, creek, or branch, and the record of survey do not express any markt tree, to which as an undividuall prick, the line might be supposed to come, the said tract shall be concluded by the certeine number of perches, but if in this or the former case there be a markt tree expressed in the certificate of survey, and well and sufficiently proved, to which either the course or the creek, river, or branch, directly leads and may be attained by adding ten per cent. to every hundred perches of that line which leads to it, the owner or owners of such land shall hold that surplusage granted by the said ten per cent against any latter taker up and even against the right honorable the lord proprietor, his heirs and successors, att the granted rent without

any alteracon by reason of the words more or less. And if the said markt tree may be attained by adding of fifty per cent. to every hundred perches of the said line which leads to it, the owner of such land shall hold that *hould* that surplusage against any later taker up ; that is to say, all between the said trees against the lord proprietor, paying arrears of rent att two pence per pound in tobacco, but if the fifty per cent will not attaine the second tree, it is out of measure unreasonable and then the owners of such land shall be concluded by his precise number of perches as if he had never any second markt tree.—And if in either the former cases or any other case, where the aforesaid fifty per cent. will attaine the second tree, so as by this act the owners may hold the surplusage, the second line is drawn from the second tree the just length—as for example, for one hundred acres a line from the first tree be mentioned north one hundred perches to the second markt tree, but is really one hundred and fifty perches and then from the second tree a line is drawn east one hundred and sixty perches, the just length then from the end of the said east line a line is drawn south one hundred perches, but no markt tree there expresst, it will leave a gore betwixt a line drawn west to the first tree and the end of the hundred perches south, in all such cases, by virtue of this act the third line shall be extended of equall length with the first, and the fourth line shall be parallel with the second as in the first example demonstrated, that the tract of land may be square and one and the same, being laid out backward or forward. But if in the certificate of survey it be expressed in the third line a certeine course and number of perches, and then or from the end thereof, or such like synonimous expressions with a straight line to the first bounded tree, such streight line shall be the bounds thereof, although the third line be not of equall length with the first; and if any second or later taker up of land have taken up the said gore or land that may include it, and not improved or built thereon, the owner of the first tract shall pay him his reasonable charge expended in taking up the same and reimburse him all the rent payd for the same; and the first owner shall intirely hold the full square, paying his lordship his succeeding rent for the surplusage. But if the taker up of the said land or gore including it, have built thereon, he shall not be lyable to an action of tresspass : But if in case the owner of the first tract do not agree with him about paying him for his improvement, then the taker up of the gore shall, for the improvements sake, hold it such number of years not exceeding fourteen years to come, as a jury of resurvey shall adjudge, and this all to be required and the number of years to commence when the owner of the first tract shall by a jury resurvey and ascertein his bound according

to this act :—And if any man hold a tract of land by the side of a creek or branch, and it be described to begin att a markt tree by the side of the said creek, river, or branch, and att the last is on that side to be bounded with the said creek, river, or branch, but it is exprest from the said markt tree to run up or down the said creek, river, or branch, a certein number of perches or a certein course, which course declines from the water side an runs into the land, and no markt tree appointed for it to end att, in all such like cases the owners of the said land shall reverse his last line, viz. as suppose the first course is north one hundred perches to the branch, creek or river, and the other west one hundred and sixty perches, and then south one hundred perches, and then east or on a streight line to the first markt tree, he shall run from his first tree west one hundred and sixty perches, and then south one hundred perches, and then east unto the said creek, river, or branch, and where the said east line intersects or falls into the water it shall determine his bounds, and he shall hold from that intersection by the water side to the first tree, but in this case or any cases parallel, if fifty per cent will not intersect the branch, creek, or river, then the precise lines and course to be the bounds thereof, and the reversing of lines shall determine bounds when the lines by the water side slants over the creek, river, or branch ; and in that case the creek, river, or branch, shall be the bounds of such tract, and it shall not pass over as in the second, third, and fourth example is demonstrated, and the reason why fifty per cent is allowed to reach the creek, river, or branch, that if more is, there will be no coherence between the creek and the course. And if a tract be described to lye on a certein side of a creek, river, or branch, and begin att a markt tree and run a certein course as suppose north one hundred perches up or down the said creek or river, to another markt tree by the river side, which second mark tree is known and really stands by the water side and make the breadth of the land within fifty per cent. there the second line supposing east, shall be drawn from the second tree, the certein number of perches supposing one hundred and sixty, and from the end thereof south till it intersect a line drawn also east from the first tree, though the said east line last mentioned be more or less in this case then fifty per cent over or under, and from that intersection a line drawn west to the first tree, the water the west, and the south line shall be the bounds of such tract and all such tracts in cases paralell, because that generally takers up of such backward land have so allowed the tracts frunting the river to lye, and that with good reason ; and as for the reasonableness of it, it cannot be otherwise enacted, so if it should be otherwise enacted it would make a generall confusion in all backward lands

bounded first upon the frontier tracts, and then one upon another: And in the cases aforesaid, although there be a great variation betwixt the prescribed course and the reall course from the first to the second tree, yet all the land betwixt the said trees by its generall bounding on the water, shall be adjudged part of the said tracts, and afterward from the second tree it shall be determined by lines as aforesaid, as in the fifth and sixth example. And if a tract of land be layd out for a certein number of acres on such courses, which though the length of the lines yett the acuteness of the angles will not make the certein number of acres, yet the tract shall be confined by such bounds as supposing the first line be north fifty perches, and north east or north north east or the like eighty perches, and so paralell, and yett the owner shall be contented, and all latter surveys adjoyning to such lines shall be good as in the seventh example. And if any man have a greater number of perches given him in length or in breadth, by express words then he ought to have, yet he shall hold the same against any latter taker up, and against the lord proprietor rendering rent as suppose north fifty perches, then east eighty perches, and so lines parallel for one hundred acres as in the eight example. Every man that hath an island intirely granted unto him, although he have surplusage, shall hold the same, although lines or courses or number of perches be not rightly exprest to conclude the same against any later taker up and against the lord proprietor, rendring rent if his lordship shall for discovery of such rent, cause the same to be resurveyed, and his lordship his heires or successors, shall not for any surplusage intirely damn or confound any pattent upon pretence of being deceived in his grant or ony other pretence because every man had land granted him, in consideration that by performing conditions of plantations it was due to him, except where his lordship had granted any lands ex mero motu de gratia especialiæ.

And whereas by this act is provided that if any man hold fifty per cent above his number of perches betwixt his known bounds, he shall maintaine the same against any later taker up, &c. and will not resurvey his land in due time, but that the lord proprietor grant the surplusage to another, yet if the first taker up have seated his plantation and made his improvement after the certein number of perches is determined, yet the surplusage shall not be said to be there onely after such determination of such number of perches, because after the surveyor hath once by description as it were shap'd the land, it is then all granted att once uno flatu, and the surplusage shall be assigned by a jury intirely to lie together, but to the least detriment of the first grantee. And if a certein number of perches in any case be prescribed to run by a creek,

river, or branch side, and no markt tree nor certein course expresst, the said number of perches shall not be spent away by the severall windings of the river, creek, or cove, but brought to a streight line of that length, or else be regulated by the other courses as in other cases is provided. If land be bounded by a creek or cove runing a certein course or number of perches, as suppose north one hundred perches if that branch, creek, or cove, wear out and expire or unreasonbly winde above five points from the course into the land before the number of perches be determined, so that there be no certeine running constant stream, or certein bed or channell of a stream continuing to the end of the line, or if there be such a windings as aforesaid in cases the line shall be the bounds from the beginning to the ending : provided that all the adjacent lands betwixt the creek and the line before it comes to slant over the branch, creek, or cove, shall be added and taken to be part of the land, that is, so farr as the creek includes as in the ninth example. If land begin att a markt tree by a river, creek, branch, or cove, and so go up or down the said river, creek, branch, or cove, to another markt tree att the mouth of a creek or cove, *to another markt tree at the mouth of a creek or cove*, and then be prescribed to run a certein course and number of perches by the said creek or cove, and the spending away of the number of perches upon the winding of the said creek or cove, would shorten the line from extending farr enough into the woods and the creek winds outwards from the land, and varying from the course, in this case the full line and prescribed shall be run out and from the end of that line, shall be drawn a line reverse to the next course, which is to be run till the line reverse intersect the said creek or cove, and by that intersection it shall describe how far that tract shall be bounded by the creek, &c. and the rest of the bounds shall in such case be ascerteined by the fourth example. As suppose from the second tree att the mouth of a cove, &c. the line proscribed east one hundred and sixty perches by the cove and bounded by the cove, and the said creek winds away east north east and east line of one hundred and sixty perches shall be run out ; and if from the end of the east line the course should be south, then there shall be first a line drawn north to the cove, and that north line shall describe att the place where it intersects the cove how farr that tract shall be bounded by the cove, and then att the intersection the south line shall be begun and continued till intersects a line drawn east to the first tree, and in the fourth example aforesaid, allways provided the south line be not fifty per cent more then it ought to be, but if the south line be fifty per cent more then it ought to be, then the south line shall be the bounds and not the creek or cove ; and if the

south line go to the westward of the first tree, then the east line aforesaid shall be further extended, that the south line may at least come to the beginning tree. In all cases where positive eye witness cannot be had, their traditionall evidence viva voce concurrning with and agreeable to record, shall be accounted good proof, declaring from whom they had their tradition and not affirming any markt tree or bounds other then or differing from what is exprest on record, and where the first markt tree is wanting and the beginning cannot be reasonably proved, but yett a second or third markt tree is found, the tree so found shall rule the bounds of the whole tract according to the rules of this act mentioned or hereafter to be mentioned—Where a man holds a peninsula or neck of land, and have severall markt or lined trees upon the points or capes of this tract which do not very exactly agree in course or distance, and yet by good evidence prove his exterior bounds, and the whole neck, as it is comonly called, or peninsula be granted to him, there all things shall be favourably interpreted to his holding the whole neck against any later taker up, although he hath built and improved, because it is unreasonable a second taker up for a small skirt of land shall have the same advantage of range as the other; but yet if the second taker up be ejected, the first shall not have any action of trespass against him except the court which gives judgment upon the titles being the same court that judgment is given, and not after in due forme moved, allow such action to be brought upon the consideration of the reasonableness of the matter, and that is humbly prayed to be thus enacted, because such peninsula or necks of land do not fall under any ordinary rule of regulation, provided that nothing be allowed of, which is directly contrary to any other rule of regulation or clause of this act. And if any tract of land be described to begin att the uppermost or lowermost marked tree of another tract, when the record of the former tract mentions not any tree markt for the uppermost or lowermost bounds thereof, in all such cases the second tract shall begin where the uppermost or lowermost bounds of the first tract terminates by this act, except it can possitively and very strongly by good witness be proved that the surveyor and not the taker up, then and there att the taking up did marke a tree for the beginning of the second tract, and if the second tract be said to bound upon the first, yet it shall not be allowed to do so to the prejudice of any latter survey, but may come to its beginning by its prescribed line or lines paralell to the tract on which its said to bound, and the land betwixt may be taken up by a comon warrant as in the tenth example, by which all cases paralell may be adjudged and determined. If a tract of land be described to lye on a certein side of a river, creek, branch,

with a stream or cove, and at last by generall bounds is described to be bounded by the said river, creek, &c. and the first line is drawn from the river, creek, &c. into the woods and from the river, &c. and there are other courses prescribed and at last come to the river, &c. yett, if any of the former courses come to the river, branch, or cove, the courses shall there determine, and thence by the water be bounded and shall not pass over, but the owner shall be content with what land is between such lines and the water, be it never so little, and apply himselfe (if he please) to his lordshipps favour for the benefitt of his warrant as in the twelfth example. If a tract of land be described to begin att a certein tree, and to run a certein course, expressing no certein number of perches till it intersect another tract of land which course goes clear from such lands, and no determinate number of perches to limitt the lines, 'tis a voyd survey and shall be deemed to include nothing by one part of one side and another part of another side of a river, creek, branch, or cove, &c. If a tract of land begin att a certein markt tree running to the head of a branch, creek, or cove, it shall be determined as aforesaid is described in such like cases, and then if for more breadth it begin againe att the head of the said river, creek, branch, or cove, and on the other side thereof the beginning on the other side shall be adjudged to be right opposite to the ending of the first side, except there be a markt tree expresst on the second side to regulate that part, otherwise if one tract of land be so laid out, and the one part of it lyes on the one side of a former survey, and another part of it lyes on the other side of the former survey, and part is taken away by the said former survey, yet the owner of the second tract shall hold all that is clear of the former survey and all former surveys whatsoever on both sides, for the land is not granted pearch by pearch as the surveyor measures it, but the grant is uno flatu all att once of every part of it. And if any mans marked tree or trees stand within another mans land, the owner of the said land in whose land the said trees stand, shall not on any pretence cutt down or destroy the said tree or trees, except he first give notice to the owner of that land whose bound such tree is, and there in his presence either plant other sufficient locust or cedar post, or stone or stones in the stead and place of that tree, under the penalty of six pounds sterling, to be paid to the party whose bounds the said tree was, to be recovered by action of debt, &c. And it is hereby made lawful for every man having such tree or trees within another mans land, and having a speciall warrant of resurvey or order of provincial court for resurvey, or order of county court for resurvey of their land to ascertein his bounds, having asked leave and being denied,

with surveyor, jury witnesses, and chain carriers, go on such land whereon or wherein his marked tree stands, and from such marked tree measure his course and distance required, provided he makes all fences as good and tight as they were found, and that he nor any one along with him in measuring the same, do not manifest damage, detriment, or harm to the owner of the land whereon they goe, or if accidentally any damage happen, that then in such cases he proffer and within three days make repairation and amends.

And be it enacted, by the authority aforesaid, That no man shall have ten per cent given him, to the precise number of perches, except it be by that addition of ten per cent to reach to a markt tree or other naturall bounds; but if he have no markt tree or naturall bounds, he shall not take ten per cent to the damage of any latter survey—begin of from the first survey and run towards it, and there be ten per cent betwixt the end of the precise number of perches, the first taker up shall enjoy it, and in all such cases if tenn per cent added to both will make their land to bound on each other, no third person shall take up or hold any land betwixt them.

And be it enacted, &c. That if any man hold land by a river or creek side, yet so as there lies marsh betwixt the firme land and the river, such adjacent marsh shall not be taken up, or being allready taken up by any other shall not be held, but such adjacent marsh shall be deemed and adjudged absolutely to belong to the land to which it is adjacent, and be bounded by the same courses drawn from the firm land into such river or creek as the firme land is bounded by, except in Somersett county, and upon Delaware and the ocean.

And be it enacted, &c. That if any man hold land which is bounded or exprest to be bounded by a line drawn from a certein tree or other individuable point of intersections, a certein course to a certein markt tree in the woods, and the said tree or trees do not correspond to the said certein course or courses, but that the courses and trees differ very much as it is too common, and that the courses prescribed give the quantity of land due to the taker up, in such cases wherein it is not otherwise before in this act provided; in ascerteining the bounds of lands by the water side, the lines shall be the bounds of such lands, and the trees shall be deserted, and one line shall be drawn from the end of another, because the errors of such surveyors was in the misplacing of trees: Yet so if any second taker up hath begun att any the aforesaid deserted trees and run lines parallel to the first taken up lands, and that by this regulation some part of the land of the second taker up will now fall within the lines of the first taker up, in such case the

first taker up shall have no action of trespass against the second taker up for any supposed tresspass within his lines, which he could not have had before, but on the contrary, if the second taker up have made any improvement on the land now to be taken away, he shall hold his improvement and all the lands, and all the land that falls to be within the lines of the first taker up by reason of this regulation, for such number of years as a jury shall think such improvement deserves, not exceeding fourteen years, to be reckoned from the time that the first taker up resurveyed his land by a jury, and the same jury shall there ore tenus determine the matter. And whereas this may occasion that some land may lie clear by or about these deserted trees or otherwise, in such cases the jury or the major part of them shall determine in writeing under their hands and seales, what part of such land happening to be clear shall be assigned to the taker up to take up againe by common warrant, and what part shall be assigned to the second taker up, to take up againe in like manner, which by this act they are impowered to do to make good what disadvantage may happen to either part, and no other person for a year and a day after shall take up any the land so assigned, and if they doe, it shall be of no effect, nor shall any grant for the same upon any such surreptitious survey, be of validity in law. And if the first taker up do not within a year and a day after the publication of this act, in the county where such land lyes, resurvey his land and ascertein his bounds, that then after one year and a day expired, the second taker up may (if he pleaseth) for certeinties sake, cause the same to be done att his own cost and charges.

And be it enacted, &c. That the justices of each respective county court, may grant a warrant of resurvey, and a veniere for a jury if required: where the reason of resurvey is only ascerteining of bounds according to this act, the petitioner onely paying to the clerk sixteen pounds of tobacco for his warrant, and thirty pounds of tobacco, or two shillings six pence to the commissioners towards supporting their expences; and where the warrant of resurvey is granted as aforesaid, there the surveyor shall have onely such fees as in a primitive survey, any law, statute, or custom to the contrary notwithstanding, and shall certify that by virtue of such warrant, he hath resurveyed a tract of land called A. first layd out for B. described to lye and be bounded as followeth [Here the situation and bounds of lands to be expressed] and that he hath resurveyed and regulated the same according to the first, second, or other example of the act for regulating and ascerteining, &c. which certificate with a faire platt shall be returned to the examiner of the county, and being approved by him, to the county clerk, to be recorded: And to that end,

Be it enacted, that the governor for the time being, may constitute and appoint one discreet person to be examiner of the said county, and to do therein as to such office belongs, &c. takeing for his fees for evry such certificate, fifty pounds of tobbacco, if the same be for five hundred acres or under, and one hundred pounds of tobbacco, if the same be above five hundred acres, and the examiner shall keep a fair book, and record the certificate and plat.

And be it enacted, &c. that if any person hold a tract of land, which on any line, is said to run a certain course and certein number of perches, to another man's land, and that certein number of perches, and fifty per cent added on the same course to that line, do not come to the said land, yet the number of perches give the quantity of land which the taker up had due to him, he shall be contented with his precise number of perches, and shall not extend his line further to the damage of any latter survey, although his survey be said to be bounded by the other mans land, but the land betwixt, being surveyed by common warrant shall be sure to him that surveyed it, provided that is not allready taken up, he shall have a year and day from the publication of this act, to take it up by common warrant, except in such cases as falls under the regulation of the eleaventh example. And if any owner of land perceiving that he hath more breadth betwixt his trees, which gives him more land then was due to him att first, have allready whilst he was owner of the first tract by common warrant, taken up the surplusage, he shall by virtue of such survey, and his Lordship's grant hould the same according to his grant, notwithstanding the said land seem to have been formerly surveyed, but there shall not be made any other line then is expressed in the record of survey to joyne the land together. *And be it further enacted* &c. that no warrant or grant to alter any survey upon pretence that the surveyor hath not taken up the intended land, or was mistaken in prescribing his courses, or any the like pretences, shall take effect or be good in law, to the altering the bounds of any land to the damage of any later taker up, that hath seated and improved where the area of such first survey includes considerable land of any quality, and hath but one markt tree, but where such area includes no land att all but water; there the mistake was manyfest and it shall be adjudged in case of difference according to the intent of the surveyor manifestly so proved and adjudged notwithstanding. If any man have two well known trees by the water side, markt for his breath of land, and hath seated, improved, and paid rent, and quietly for seaven years enjoyed the land betwixt the said trees, and yet by some error, or mistake in the surveyor, or clerk, the said land is exprest in the body of his grant or patent, to begin at one of the

said trees, and run to the other; but the line prescribed runs directly contrary (that is to say) in runing up the said river, creek &c. instead of down the river, creek &c. or down instead of up to the second tree, and leave out the intended land where such mistake is manifest; and the first taker up hath as aforesaid, seated and improved betwixt the said trees, and never claimed other land by virtue of the grant but the land betwixt the said trees, the first taker up shall enjoy it as if no such mistake had been, and if there be any other errors in his back lines, it shall be regulated as in like cases, is before exprest for other land and the second taker up may by virtue of this act and his lordships favour make use of his warrant else where, and the first taker up shall reimburse the second his reasonable charge for letting his survey fall to be adjudged by the county court upon his petition or motion, the first taker up being first called and heard, and after such judgment, award execution by fiere facias, or attachment; but yet if such second survey have been made above seaven years before this present sessions and hath been seated and improved by the second taker up, and never yet seated and improved by the first taker up or his assignes, then the first taker up, and not the second, shall be putt to seek for the benefitt of his warrant elsewhere, and this word up the river, creek &c. instead of down, or down instead of up, shall not vitiate any grant or deed by which land is conveyed from one man to another, where the rest of the words in the said grant or deed manifestly imply it only to be a mistake, and the first taker up shall rectifiy his survey, and take a new grant which shall be under the same rent and no other. Provided always, *And be it enacted*, that nothing in this act conteined shall alter, change, make voyd, make erroneous, or defeat any judgment given and recovered in the provincial court before the makeing of this act, nor make void any arbitration or award under hand and seale given before the makeing of this act, although such judgments and awards are given contrary to the meaning of this act, but all such judgments and all such awards, though they might not otherwise be good about land, shall be and are hereby confirmed, other errors in law excepted: provided such awards shall, within a year and a day be recorded in there respective county records, after the publication of this act, and acknowledged in open court by one of the arbitrators or umpire. And if a certificate be so defective that one whole line be left out, yett if the other lines be soe exprest that they shew what length and breadth were designed, and that the length and breath would make out the quantity of land which the taker up had due to him, and the lines exprest do inferr to common reason and sense, that the lines were left out by mistake: in all such cases the first taker up shall hold his

land against any later taker up as if the certificate were good and intire. And if any man hold a tract of land which is exprest to be bound on another tract and to begin att a markt tree, standing in the line of that tract on which it is said to bound, but the first markt tree cannot be proved nor found, yet if any other markt tree of the tract be found and proved, that found and proved tree, shall rule the bounds of the tract, yet so as only the precise number of pearches shall be held: but if no tree be found the owner may resurvey and lay it out again, beginning in the line where it was at first said to begin: but it shall then be accounted latter then any other survey in them parts; and the taker up shall not intrude, nor hold part of any tract of land whereon a plantation is seated, and whereof there is certain prooff of the bounds, because a certeinty is to be preferred before an uncerteinty. But what land he shall include by his survey clear of other tracts, he may hold forever by virtue of his first warrant, and the like shall be adjudged in all paralell cases where no tree is to be found, if the owners shall think it any advantage by saveing his warrant, but then after such resurvey, he shall not pretend to his former survey any more forever. Yet if any such markt tree was said to begin in the point of a fork, att the mouth of a creek, or such other place which is as it were a naturall beginning, there if no tree is found, yett if the place is certeinly known and proved, a jury shall find a point or prick to begin at most agreeable to the descripcon in the certificate of survey or grant of the same. No evidence admitted to prove a markt tree where the record expresses none.

And lastly, *Be it further enacted &c.* that if any controversy happen about the bounds of land, whereof there is no parrell within this act, the provincial court shall not give judgment therein, but it shall be putt to the assembly to be determined by an act, and to be made a president for the future.

MARYLAND, *ss.*

I hereby certify that the foregoing is truly taken from Liber L. L. No. 2, folio 207 to folio 227, one of the law record books of the late province, now state of Maryland, deposited and lodged in, and belonging to the office of the court of appeals for the Western Shore.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said court of appeals, this fourteenth day of November, in the year of our Lord, one thousand eight hundred and six.

* * * *L.S.* * * *

TH. HARRIS, Jun. Clk. Ct. Apps. W. S.

Note—In Bacon's edition under the title *of this* law.

"This act fell under the general repeal of 1704, ch. 77, but by ch. 98 of that year was revived and continued till the end of the next session. It was in like manner revived by 1705 ch. 10, and 1706, ch. 1, and totally expired on the 15th April 1707."

MARYLAND.—SEPTEMBER SESSION, 1704.

[Chapter 77.] *An act repealing all former acts of assembly heretofore made, saving what are hereby excepted.*

BE it enacted, by the queens most excellent majesty, by and with the advice and consent of her majesty's governor, council and assembly of this province, and the authority of the same, That all and every act and acts of assembly of this province, made or enacted at any time before the session of assembly begun and held at the port of Annapolis, the twenty sixth day of April 1704, except the act, entitled, "an act for the establishment of religious worship within this province, according to the church of England, and for the maintenance of ministers," and except the act "for keeping good rules and orders in the port of Annapolis," and which are now revived, saved and enacted this present session of assembly, be and are hereby repealed and made void.

Saving always to all and every person or persons, whatsoever was and is his or their rights and benefits which he or they had by the former acts of assembly; any thing in this present act contained to the contrary notwithstanding.—

Passed the third of October 1704, and recorded in liber L. L. No. 3, folio 169, one of the law records of the late province, now state of Maryland, remaining in the office of the court of appeals for the western shore

TH: HARRIS, JUN.

Clerk Ct. Apps. W. S.

MARYLAND.—SEPTEMBER SESSION, 1704.

[Chapter 79.] *An act declaring the act, entitled, an act ascertaining the bounds of land, to be in force.*

BE it enacted by the queens most excellent majesty, by and with the advice and consent of her majesty's governor, council and assembly of this province, and the authority of the same, That the act of assembly made at a general assembly begun and held at the port of Annapolis the twenty-seventh day of June, in the year of our lord one thousand six hundred and ninety-nine, entitled, "an act ascertaining the bounds of land," and every clause, matter or thing therein contained, is hereby declared to be and remain in full force and effect, to all intents, constructions, and purposes whatso-

ever, to the end of the next sessions of assembly; this present sessions not having leisure fully to consider thereof.

Passed third of October, 1704, and recorded in liber L. L. No. 3, folio 170, one of the law records of the late province, now state of Maryland, remaining in and belonging to the office of the court of appeals for the western shore.

TH: HARRIS, JUN.
Clerk Ct. Apps. W. S.

At December session, 1704, chap. 98, a similar act of assembly was enacted.—Vide liber L. L. No. 3, folio 214.

At May session, 1705, chap. 10, a similar act of assembly was enacted.—Vide liber L. L. No. 3, folio 227.

At April session, 1706, chap. 1, a similar act of assembly was enacted.—Vide liber L. L. No. 3, folio 231.

Note.—The next session of assembly ended the fifteenth of April 1707

APRIL SESSION, 1715.

No. 45. An act for ascertaining the bounds of lands within this province.

For as much as at the first settlement of this province the heathen indian enemies were so very numerous and barbarous that both the persons desirous to purchase land and to settle and inhabit on the same, and also the surveyors appointed by the right honourable the Lord proprietary to survey, and lay out such lands to the said persons were deterred from making so strict a scrutiny into the true situation of the several rivers, creeks, and branches of this bay, so as to prevent the interference of the bounds, limited and appointed by the said surveyors, for each tract and from setting of the courses or measuring the true distances of lines directed, to run to the several trees, or other bounds then prescribed, to limit and bound the said several tracts of land, and also the surveyors themselves so appointed, were too often both very ignorant and negligent, in performing their duty therein; and also for as much as the bounded trees by them formerly bounded, for very many of the said former surveys are dead, and so far lost and forgotten, that no remains or memory are left of the same and the other boundaries either of bays, rivers, creeks or branches, as also of courses and distances, so darkly and unskilfully exprest, that many great controversies and suites, have been and are daily moved thereupon, and no certain method as yet being prescribed for the speedy determination

thereof, but a course at common law and trials by juries, in the provincial court, which jurys never having had any view of the lands in debate so as to be made sensible of the situation of them, (whereby the true intent and meaning of the dark, and unskillfull expressions of the aforesaid surveyors, are the better to be understood) cannot possibly give a just verdict thereupon, which occasions most common and frequent appeals to the superior courts, and vast additional charges thereby accrueing, insupportable to the inhabitants of this province especially the poorer sort, who are hereby frequently ruined or very much impoveished, and many times found to relinquish and give up their just right to their more potent litigious adversaries, rather than suffer the loss of time, fatigue and expence of a long journey, and longer and more tedious attendance, and for as much as the multitude of cases varying in their several circumstances, will not admit of any general rules to be prescribed, whereby the court and jury may adjudge of, and determine the matter in controversy, therefore this present general assembly do humbly pray that it may be enacted,

And be it enacted, by the kings most excellent majesty, by and with the advice and consent of his majesty's governor, council and assembly of this province, and the authority of the same, that five persons in each respective county of this province, (who are best skilled in the art of surveying, and best acquainted with the nature and design of ancient surveys,) such as the governor and council for the time being shall see proper, shall be commissioned and empowered under the great seal, used in this province by the governor, for the time being, who by virtue thereof, and the authority of this act, shall or may with or without adjournment from time to time, meet and summarily, and without the formalities of proceedings used in courts of law or equity, by testimony of witnesses upon oath, examination of parties interested, or by all, or any of the said ways, or otherwise at their discretions from time to time, to hear and determine all differences and controversies which hereafter, shall, or may happen in their several and respective county's, between any persons therein of, for touching or concerning the bounds and metes of land only; which said commissioners, shall take the following oath. "I. A. B. do swear that I will justly "and truly execute the powers and authorities in this act "contained, and according to the best of my knowledge, "without favor or affection to any of the parties concerned, "*so help me God.*" And for that it may be highly necessary that certain times be appointed for the said commissioners to meet at a certain place whereto all persons aggrieved may repair to make application for redress.

Be it enacted by the authority aforesaid, that the said commissioners shall appoint certain days, and make publication thereof, whereon to meet at the court house, in each respective county, at which day and place, the said commissioners, or any three or more of them, upon complaint made by any person touching any difference or dispute concerning the bounds or limits of any tract or tracts of land, or part or parcel of any tract or tracts of land, lying and being in their respective county's shall appoint a certain day, or days on which the said commissioners, or any three of them at the least, not being any ways related to either complainant or defendant either by consanguinity or affinity, or any ways interested in such dispute, unless by mutual consent of both the said parties, shall go upon the land in dispute, and view and consider the premises.

And for the better enabling the said commissioners to proceed with effect in the said causes, *Be it further enacted* by the authority aforesaid, that upon a petition or complaint made to the said commissioners in writing, by any person or persons any ways concerned in such disputable bounds, that it shall and may be lawful for any one of the said commissioners to grant summons in writing, to be directed to the party or parties therein mentioned, and also to any witness and witnesses, or his Majesty's surveyor of the said county for the time being, to be and appear before the said commissioners at a day and place therein to be perfixed; the service whereof, in such manner and form as is usually allowed to be good service. In cases of subpœna shall be accounted to be a good service in the cases aforesaid; and that upon appearance or default of any person or persons interested in any manner as aforesaid, upon oath thereof made before the said commissioners, they shall and may notwithstanding proceed to the determination of such controversies, saving always, that when any person or persons so to be summoned shall be beyond the seas, or cannot be found to be summoned, that no proceeding shall be thereupon had until after eighteen months then next following, and then oath being made of endeavouring to serve the said summons, the said commissioners shall and may proceed as if the said party had been actually summoned, unless the said person or persons so absent, upon a new summons after his or their return, or being found, shall sooner appear.

And be it further enacted by the authority aforesaid, that if the surveyor of the county aforesaid, shall wilfully forbear or delay to be and appear according to the tenor of the same summons, such surveyor so wilfully refusing or delaying, shall forfeit for every such offence five hundred pounds of tobacco

to the king's majesty, his heirs and successors, for support of government, to be recovered in any court of record by action of debt, bill, plaint or information wherein no essoyn, protection or wager of law to be allowed, and if any witness so summoned shall neglect to appear at the time and place notified, or shall when appearing refuse to give his or their evidence, it shall be lawful for the said commissioners to issue attachment against him, her or them, to cause him to come or commit such wittnesses for such their obstinacy till they give their evidence as the case may require. And for the better discovery of the true bounds of the lands in dispute, the commissioners or any three of them as aforesaid, being upon the land, may cause the said lands and also any other adjacent lands, for the better information to be surveyed, and having duly and impartially considered as well the proofs and allegations of both parties as all other circumstances nearest concurring with the true intent, design and meaning of the original surveys, shall then and there determine and ascertain the limits and bounds of the said lands in dispute, as they or the major part of them then and their presents shall adjudge most just and reasonable, and cause the same lands in their presence to be new markt out with such marks and bounds as to them shall be adjudged most plain and durable, and cause three fair platts and certificates thereof to be made by the said surveyor, two thereof for the contending parties, and the third to be fairly entred in a book for that purpose to be provided by the commissioners at the county charge, of good, large, strong paper, with a leather or parchment cover, which said books shall be lodged with the clerk of the county where such lands as aforesaid lye, and kept among the records of the same county, which said bounds so ascertained and entred as aforesaid, shall be and remain the certain and undoubted bounds of the said lands forever; and further, the said commissioners after having ascertained the limits and bounds as aforesaid, shall and may by virtue of this act put either the complainant or defendant (as the case shall require) in peaceable possession of the bounds so determined, and also assess and decree all costs and damages accruing thereupon, upon non-payment whereof it shall and may be lawful for the party or parties concerned to bring an action at common law for recovery thereof, and to give such order or decree in evidence, to prove the same in which action no essoyne protection or wager of law shall be allowed: and that from all and every of such decrees and determinations there shall be no appeal or review other than is hereafter expressed.

And be it further enacted by the authority aforesaid, That such commissioners so commissioned as aforesaid, in consideration of their time and trouble in viewing the several lands

in controversy as aforesaid, and passing such order and decree as aforesaid, shall for every day they attend thereon, be paid the sum of one hundred pounds of tobacco per diem, and no more, to be paid by such of the parties as the commissioners shall adjudge to pay the same. And for ascertaining what fees the surveyor shall receive, *Be it enacted* by the authority aforesaid, that for all such surveys which in this case shall be made, the said surveyor shall have such fees as by law are settled for primitive surveys, but if in case it should be found needful to survey and run out only one or more lines of any of the adjacent lands, that then the surveyor for every such line or lines by him run, shall have only a quarter of a pound of tobacco per perch, and no more, and if it shall so happen that the king's surveyor of the county shall be either a person interested in any of the said disputes or related to either party, or that any just exception be made against him and allowed by the said commissioners, then the said commissioners shall appoint some other skillful and honest person in his stead to perform that service—and for the better dispatch of business by the said commissioners, *Be it enacted*, by the authority aforesaid, that the said commissioners shall and may by their wisdoms and discretions, order and settle such just fees and rewards for such clerk and other officers and assistants as they shall judge necessary, to be by them appointed and employed, all which said officers and assistants so appointed as aforesaid, shall give their due attendance at the time and place appointed, and do and perform such services in furtherance of this act, as shall be then and there directed them by the said commissioners, under such penalty's as by the said commissioners shall be adjudged not exceeding one hundred pounds of tobacco, to be levied by way of execution to the use of the said commissioners, on the body, goods and chattels of each of such offenders.

And for the more effectual putting this act in execution, *Be it further enacted* by the authority aforesaid, by and with the advice and consent aforesaid, that sheriffs, coroners and constables within this province, and other the officers aforesaid, shall pay as due obedience to any precept whatsoever that shall be directed to any of them from the commissioners aforesaid, as to any other precept whatsoever, and shall be under like pains or penalties for disobeying or contemning thereof, and shall in all things be aiding and assisting to such commissioners in their several offices, as they are or ought to be to their several and respective county courts, or to any single justice thereof; for all which services, by such sheriffs or coroners to be performed by virtue of this act, they shall be allowed half the fees that are allowed them by law, in other cases, for such like services, and shall not charge or exact

more on pain of incurring the penalties directed by the act for limitation of officers fees against the offenders thereof.

And to prevent the said commissioners from being molested and disturbed in the execution of their commission, *Be it further enacted* by the authority aforesaid, that if any person or persons whatever, shall presume to molest, disturb or obstruct the said commissioners, surveyor, or any other officer or assistant in performance of their duty aforesaid, in any case within the direction of this act, shall forfeit and pay to our sovereign lord the king, his heirs and successors, for the support of government, the sum of one thousand pounds of tobacco, to be recovered in any court of record within this province, wherein no essoyne, protection, or wager of law shall be allowed.

And be it further enacted by the authority aforesaid, that if any suit or action be commenced or prosecuted against any person or persons for what he or they shall do in pursuance of the execution of this act, such person or persons so sued may plead the general issue, and upon any issue joined, may give the special matter in evidence, and if the plaintiff shall discontinue his suit, or judgment pass against him, the defendant or defendants shall recover his or their double cost for his or their unjust vexation.

Provided always, that if either of the said parties disputing bounds as aforesaid, shall find himself aggrieved by any such order, determination and decree as aforesaid, it shall and may be lawful for the person so aggrieved, to make application to the governor for the time being for a special commission, to be directed to three persons inhabiting within this province, whereof one to be of his majesty's council or one of the justices of the provincial court, and the other two to be well skilled in the art of surveying, and of good character, such as the governor shall think fitt to appoint to review such determination, order and decree, who by virtue of such commissioner shall have full power and authority to review the same, according to the directions and after the manner prescribed in this act, and either confirm the same or otherwise to pass such further determination, order and decree, of and upon the premises, as to them shall seem most just and equitable, so always that the said review shall be made and fully compleated and entered as aforesaid, within three months from the time of the determination made by the first commissioners, from which last determination and entry of the platt and certificate thereof as aforesaid, there shall be no farther review or appeal whatsoever allowed to any of the courts of this province; But in case the pretensions of any party grieved shall amount unto or be adjudged to exceed the value of three hundred pounds sterling, that then and in all

such cases, such party may have an appeal from such sentance of the commissioners of review to the king's majesty in council, he giving security to prosecute such appeal with effect, or otherwise pay and satisfie all such costs and damages as shall or may accrue to the other party, for whom such sentance has been given by making such his appeal as aforesaid, *Provided*, nevertheless, and it is hereby enacted and declared, that the party for whom such sentance as aforesaid shall be given, shall not any ways be delayed by such appeal to the king's majesty as aforesaid, but immediately put in possession of the land within the bounds so ascertained as aforesaid; and also provided that where any bounds of lands have been already settled and determined by any law suits, arbitrations or otherwise, such determination appearing on record, the same so settled and determined shall remain and continue unalterable and no ways subject to any view or review of the commissioners appointed by this law, and that it shall and may be lawful for the provincial court of this province to hear and determine all actions of trespass and ejectments already depending before them, or which shall be commenced before the first day of June one thousand seven hundred and sixteen, any thing in this act to the contrary in any wise notwithstanding.—And further, that this act nor any clause therein contained shall be of force, or put in execution within any the county's of this province until the first day of June, in the year of our Lord God seventeen hundred and sixteen, or continue in force longer than three years after the said first day of June, seventeen hundred and sixteen.

May 31*st*, 1715—Read and assented to by the house of delegates, and signed per order.

THO: MALNEMARA, *C'lk H. D.*

May 30th, 1715—Read and assented to by his majesty's honorable council, and signed per order.

W. BLADEN, *Cl'k Council.*

June 3d, 1715—On the behalf of his most sacred majesty king George of Great Britain, &c.

I will this be a law.

*****
L. S.
*****

JO: HART.

Truly copied from liber L. L. No. 4, folios 256 to 260, one of the law records of the state of Maryland, belonging to the office of the court of appeals for the western shore.

TH: HARRIS, JUN. *Clerk.*

Bacon's Note—"This act was to commence the first June 1716, and to continue in force three years from that date. It was also repealed by 1718, ch. 18, which was dissented to by his lordship."

MARYLAND—MAY SESSION, 1717.

[Chapter 9.] *A supplementary act to the act for ascertaining the bounds of land within this province.*

Whereas an act of assembly of this province, entitled, "an act for ascertaining the bounds of land within this province," hath been found to be of great use and general ease to such parts of its inhabitants as have had occasion to make use of the same; but for as much as its defects could not be observed before the same was put in practice, some of which now appearing; for remedy whereof it's prayed that it may be enacted,

And be it enacted, by the right honourable the lord proprietary, by and with the advice and consent of his lordship's governor, and the upper and lower houses of assembly, and the authority of the same, That whenever differences shall arise between any of the inhabitants of this province touching the bounds of their lands, and that if it shall so happen that either the complainant or defendant shall be related to the major part of the commissioners appointed in any county, or have any estate or claim of, in, or unto any lands contiguous to the lands in dispute, it shall and may be lawful for the remainder of such commissioners which are qualified, to nominate, appoint and chuse one or two good and lawful freeholders, (as the case shall require) dwelling in the said county, who after taking the usual oaths, shall be legally qualified to act with the remaining commissioners in all such disputes, (and no other) in as ample and effectual manner as any commissioners whatsoever, and shall demand and receive the same rewards for their trouble.

And whereas the provision in the aforesaid act for the commissioners already appointed, or hereafter to be appointed for ascertaining the bounds of land in each county, seems to admit of a dispute in respect of their allowance per day; to prevent which for the future and to explain such ambiguous expressions, *Be it enacted*, by the authority aforesaid, by and with the advice and consent aforesaid, That each and every such commissioner already appointed, or hereafter to be appointed for ascertaining the bounds of land in each respective county, be allowed the sum of one hundred pounds of tobacco for each day they already have, or hereafter shall serve as commissioners, and no more.

And for as much as by the before recited act no provision is made for the commissioners of review, *Be it enacted*, by and with the authority, advice and consent aforesaid, That there be allowed to each commissioner of review, the sum of one hundred pounds of tobacco for each day he shall serve and attend, and no more, to be paid by such of the contending arties as the said commissioners shall adjudge.

Passed the 8th of June, 1717, and recorded in Liber L. L. No. 4. folio 372, one of the records of the laws of the late province now state of Maryland, belonging to the office of the court of appeals for the Western Shore.

TH : HARRIS, JR. Clk. C. Ap. W. S.

Bacon's Note.—" This act, together with the original act of 1715, Ch. 45, were repealed by 1718, Ch. 18, which his lordship dissented to ; but would otherwise have expired with the original act on the 1st June 1719.

MARYLAND—APRIL SESSION, 1718.

[Chapter 18.] *An act for ascertaining the bounds of land within this province.*

For as much as at the first settlement of this province, the heathen indian enemies were so very numerous and barbarous, that both the persons desirous to purchase land and to settle and inhabit the same, and also the surveyors appointed by the right honourable the lord proprietary to survey and lay out such lands to the said persons, were deterred from making so strict a scrutiny into the true situation of the several rivers, creeks and branches of this bay, so as to prevent the interference of the bounds limited and appointed by the said surveyors, for each tract, and from setting off the courses or measuring the true distances of lines directed to run to the several trees or other bounds there prescribed to limit and bound the said several tracts of land, and also the said surveyors themselves so appointed, were too often both very ignorant and negligent in performing their duty therein ; And also for as much as the bounded trees by them formerly bounded, for very many of the said former surveyors are dead, and so far lost and forgotten, that no remains or memory are left of the same, and the other boundaries, either of bays, rivers, creeks or branches, as also of courses and distances, so darkly and unskillfully exprest, that many great controversies and suits have been and are daily moved thereupon, and no certain method, as yet, being prescribed for the speedy determination thereof, but a course at comon law, and trial by juries in the provincial court, which juries never having had any view of the lands in debate, so as to be made sensible of the true situation of them, (whereby the true intent and meaning of the dark and unskilful expressions of the aforesaid surveyors are the better to be understood) cannot possibly give a just verdict thereupon, which occasions most common and frequent appeals to the superior courts, and vast additional charges thereby accruing, insupportable to the inhabitants of this province, especially the poorer sort, who are thereby frequently ruined or very much impoverished, and many times forced to relinquish and give up their just right

to their more potent litigious adversaries, rather than suffer the loss of time, fatigue and expense of a long journey, and a longer and more tedious attendance. And for as much as the multitude of cases varying in their several circumstances will not admit of any general rule to be prescribed, whereby the court and jury may adjudge of and determine the matter in controversy; therefore this present general assembly do humbly pray it may be enacted, *And be it enacted* by the right honourable the lord proprietary, by and with the advice and consent of his lordship's governor, and the upper and lower houses of assembly, and the authority of the same, That nine persons in each respective county of this province, who are the best skilled in the art of surveying, and best acquainted with the nature and design of ancient surveys, and of the best reputation in the county, (none of them being surveyors of the county,) such as the governor and council, for the time being shall think proper, shall be commissoned and impowered under the great seal used in this province, by the governor for the time being, which commissioners by virtue of such commission, and the authority of this act, are required to take the oaths appointed by law, and subscribe the oath of abjuration and test, before any persons qualified to administer the same, as likewise the following oath: "I, A. "B. do swear, that I will justly and truly execute the powers "and authorities in this act contained, according to the best "of my knowledge, without favour or affection to any of "the parties concerned. So help me God." And to meet at their several and respective court-houses the second day of every county court, to receive the petitions, (which must be in writing) of all persons that shall have occasion to make application to them, for the ascertaining the bounds of any land lying within such county; provided, that the party complaining or petitioning twenty days before preferring such petition, shall have given due notice to all persons that are any way interested or concerned in the bounds of such land, by setting up notes at the court house door, and parish church where the land lies, certifying the time when such party designs to make application to the commissioners, at which time and place all persons concerned in the dispute about the bounds of such land, both complainants and defendants are required to meet, and in the presence of the commissioners then present to make choice of any number of the aforesaid commissioners, not being less than three, to determine the matter in controversy and dispute between them concerning such bounds of their land, such choice to be noted and certified on the back of such petition by the commissioners then present, which number of commissioners being mutually chosen by the parties contending, and certified as aforesaid, shall

proceed to appoint a day and make public declaration thereof, the day of the making such choice, and order notes to be set up at the court-house door, and parish churches, mills, and most frequented towns in the said county, (not being less than five weeks from the time of such election,) to meet on the lands in dispute, and shall issue out summons in writing for all such evidences or witnesses as shall be to them nominated by either or any of the parties as they or either or any of them shall require the same, requiring them to meet at the time and place appointed, to give evidence what they know concerning the bounds of such land, and likewise issue out a summons to his lordship's surveyor of the county, to attend the said commissioners at the time and place appointed; the service of all which summons, in such manner and form as is usually allowed to be good service in cases of subpæna, shall be accounted good in the cases aforesaid, and that if the surveyor of the county aforesaid shall wilfully forbear or delay to be and appear, according to the tenor of the same summons, such surveyor so wilfully refusing or delaying, shall forfeit for every such offence five hundred pounds of tobacco to his lordship, his heirs and successors, for support of government, to be recovered in any court of record, by action of debt, bill, plaint or information, wherein no essoyn, protection or wager of law to be allowed; and if any witness, so summoned, shall neglect to appear at the time and place notified, or shall, when appearing, refuse to give his or their evidence, it shall be lawful for the said commissioners to issue attachment against him, her or them, to cause him to come, or commit such witnesses, for such their obstinacy, till they give their evidence, as the case may require.

And for the better discovery of the true bounds of the lands in dispute, the commissioners aforesaid being met at the time appointed upon the land, may cause the said lands, and also any other adjacent lands, for their better information, to be surveyed; and having duly and impartially considered as well the proofs and allegations of both parties, as all other circumstances nearest concurring with the true intent, design and meaning of the original surveys, shall then and there determine and ascertain the limits and bounds of the said lands in dispute, as they or the major part of them, then and there present, shall adjudge most just and reasonable, and cause the same lands in their presence to be new marked out, with such marks and bounds as to them shall be adjudged most plain and durable, and cause three fair plots and certificates thereof, to be made by the said surveyor, two thereof for the contending parties, and the third to be fairly entered in a book for that purpose, to be provided by the commissioners, at the

county charge, of good large strong paper, with a leather or parchment cover; which said books shall be lodged with the clerk of the county where such lands as aforesaid lie, and kept among the records of the same county; which said bounds so ascertained and entered, as aforesaid, shall be and remain the certain and undoubted bounds of the said lands forever. And further, the said commissioners after having ascertained the limits and bounds, as aforesaid, shall and may by virtue of this act, put either the complainant or defendant, as the case shall require, into peaceable possession of the bounds so determined, and also assess and decree all costs accruing thereupon, and the damages suffered on such land, and award execution thereon against such of the parties as they shall adjudge to pay the same; and that from all and every such decrees and determinations made by such commissioners, elected and chosen as aforesaid, there shall be no appeal or review, be the value of the land what it will; but in case any person or party concerned or any ways interested in the bounds of the lands in dispute, shall obstinately or wilfully, after publication, as aforesaid, refuse or delay to meet the complainant before the commissioners at the time notified for preferring their petition, or if present, will not join in making their election or choice of such number as aforesaid, out of the commissioners commissioned as aforesaid, to ascertain the bounds of the land in dispute, that then in all such cases it shall and may be lawful for the major part of the commissioners, not being related to either party, either by consanguinity or affinity, or any ways interested in the lands in dispute, to proceed in the same manner as before mentioned, to make their decree and determination concerning the bounds of the lands in dispute, and to assess and decree all cost and damages, and execution thereon, as aforesaid, against the party or parties which shall be adjudged to pay the same, from which decree and determination there shall no appeal or review be allowed, other than is hereafter expressed.

And be it further enacted by the authority aforesaid, That every such commissioners so commissioned, and executing their commission as aforesaid, in consideration of their time and trouble in viewing the several lands in controversy as aforesaid, and passing such order and decree as aforesaid, shall for every day they attend thereon, be paid the sum of one hundred pounds of tobacco, and no more, to be paid by such of the parties as the commissioners shall adjudge to pay the same.

And for ascertaining what fees the surveyors shall receive, *Be it enacted* by the authority aforesaid, That for all such surveys which in this case shall be made, the said surveyor shall have such fees as by law are settled for primitive surveys, but

if in case it should be found needful to survey and run out only one or more lines of any of the adjacent lands, that then the surveyor for every such line or lines by him run shall have only a quarter of a pound of tobacco per perch, and no more. And if it shall so happen that his lordship's surveyor of the county, shall be either a person interested in any of the said disputes, or related to either party, or that any just exception be made against him, and allowed by the said commissioners, then the said commissioners shall appoint some other skilful and honest person in his stead to perform that service.

And for the better dispatch of business by the said commissioners, *Be it enacted* by the authority aforesaid, That the said commissioners, shall and may by their wisdoms and discretions order and settle such just fees and rewards for such clerk, and other officers and assistants as they shall judge necessary, to be by them appointed and employed ; all which said officers and assistants, so appointed as aforesaid, shall give their due attendance at the time and place appointed, and do and perform such services in furtherance of this act, as shall be then and there directed them, by the said commissioners, under such penalties as by the said commissioners shall be adjudged, not exceeding one hundred pounds of tobacco, to be levied by way of execution to the use of the said commissioners, on the body, goods and chattels of each of such offenders.

And for the more effectual putting this act in execution, *Be it further enacted* by the authority aforesaid, by and with the advice and consent aforesaid, That all sheriffs, coroners and constables within this province, and other the officers aforesaid, shall pay as due obedience to any precept whatsoever, that shall be directed to any of them from the commissioners aforesaid, as to any other precept whatsoever, and shall be under like pains or penalties for disobeying or contemning thereof, and shall in all things be aiding and assisting to such commissioners in their several offices, as they are, or ought to be, to their several and respective county courts, or to any single justice thereof; for all which services by such sheriffs or coroners to be performed by virtue of this act, they shall be allowed half the fees that are allowed them by law in other cases, for such like services, and shall not charge or exact more, on pain of incurring the penalties directed by the act for limitation of officers fees, against the offenders thereof.

And to prevent the said commissioners from being molested and disturbed in the execution of their commission, *Be it further enacted* by the authority aforesaid, That if any person or persons whatsoever, shall presume to molest, disturb or obstruct the said commissioners, surveyor, or any other officer or assistant in performance of their duty aforesaid, in any

ease within the directions of this act, shall forfeit and pay to the lord proprietary, his heirs and successors, for the support of government, the sum of one thousand pounds of tobacco, to be recovered in any court of record within this province, wherein no essoyn, protection or wager of law shall be allowed.

And be it further enacted by the authority aforesaid, That if any suit or action be commenced or prosecuted against any person or persons for what he or they shall do in pursuance of the execution of this act, such person or persons, so sued, may plead the general issue, and upon any issue being joined, may give the special matter in evidence—and if the plaintiff shall discontinue his suit, or judgment pass against him, the defendant or defendants shall recover his or their double costs for his or their unjust vexation: Provided always, That in case the pretensions of any party grieved, shall be adjudged by the major part of the commissioners determining the bounds as aforesaid, to be of or to exceed the value of three hundred pounds sterling, that then in all such cases, such party may have an appeal from such determination and decree of the commissioners aforesaid, to the king's majesty in council, he or they giving security to prosecute such appeal, with effect, or otherwise pay and satisfy all such costs and damage as shall or may accrue to the other party for whom such sentence has been given by making such his appeal as aforesaid.

Provided nevertheless, and it is hereby enacted and declared, That the party for whom such sentence as aforesaid, shall be given, shall not any ways be delayed by such appeal to the king's majesty as aforesaid, but immediately put in possession of the lands within the bounds so ascertained as aforesaid; and also provided, That where any bounds of land have been already settled and determined by any law suits, arbitration, or otherwise, such determination appearing on record, the same so settled and determined shall remain and continue unalterable and no ways subject to any view or review of the commissioners appointed by this law; and that it shall and may be lawful for the provincial court of this province to hear and determine all actions of trespass and ejectments already depending before them: Provided always, That if any person concerned or interested in any of the lands in dispute, as aforesaid, shall happen to live in any of the remote counties of this province from the county where such land in dispute lies, or be out of the province, or beyond sea, that then the party complaining shall make publication, as before provided by this act, three months, the parties living in the remote counties, and twenty four months, the parties being out of the province, or beyond sea, before his application to the commissioners as aforesaid, which publication must be

made appear before the commissioners commissioned as aforesaid, at the time of such application, whereupon the commissioners may proceed to determine such bounds of land so prayed to be ascertained, as effectually to all intents and purposes, as if the parties concerned, or any ways interested were personally present.

And whereas several persons, by their humble petition, have represented to this present session of assembly, That they being concerned and interested in lands, the bounds whereof have been in dispute, and whereupon the commissioners of the several counties for ascertaining the bounds of land pursuant to the act of assembly made at a session of assembly, begun and held at the city of Annapolis, the 26th day of June, anno domini one thousand seven hundred and fifteen, entitled, "An act for ascertaining the bounds of land within this province," have made their award, decree and determination concerning such bounds, by which awards, decrees and determinations, the petitioners aforesaid being much aggrieved, pursuant to the aforementioned act, made their application in due time by way of petition to his excellency the governor, for a commission of review upon the aforesaid proceedings, which his excellency has been pleased to grant them, but by sundry accidents have lost the benefit of having such commission executed within the limited time according to the aforementioned act, and others must unavoidably loose the benefit of such commissions, the persons commissioned, and also others interested being obliged to attend the public affairs and business of this province in this present general assembly, until the time limited for executing such commissions will either be expired, or so near expiring, that it will be impossible such commissions can be executed in due time, pursuant to the directions of that act. And it being further considered, that there may be some others that conceive themselves injured by the awards and decrees of the commissioners for the counties that had resolved in due time, but has not yet made application to his excellency for a commission of review, and likewise some cases where the commissioners of the counties have begun and made some steps towards, but have not finished their award and determination therein;

Be it therefore likewise enacted, That in all the aforementioned cases, neither the commissioners of any of the several counties, nor commissioners of review, shall proceed any further in executing such their commissions, by virtue thereof, or the aforementioned act, but that all parties concerned in such dispute, where there has not been a final and conclusive determination, pursuant to the direction of the said act, shall be and are hereby left to their liberty to make their fresh application to the commissioners appointed by this act, and to

enjoy and reap the benefit of the same, to all intents and purposes, as any other person or parties whatsoever.

And further, whereas sundry persons have likewise by their humble petition set forth, That some of the commissioners of the counties, and also commissioners of review for ascertaining the bounds of land, pursuant to the aforementioned act, have proceeded to make and have made their awards, decrees and determinations concerning the bounds of several lands, (wherein such petitioners were interested) and have awarded their lands to others, to their great prejudice, without their being made parties, and without giving such due notice of their proceedings to such petitioners, as, according to the true intent and meaning of the aforementioned act they ought to have done; by which means such petitioners have been precluded from making their just defence, and are left remediless by any other way or means whatsoever, unless specially provided for by a law for that purpose; *Be it therefore likewise enacted*, That all and every such person or persons whatsoever, interested in any of the lands within this province, concerning the bounds whereof either the commissioners of any of the several counties in this province, or commissioners of review, have made any award, decree, or determination to their prejudice, without having such notice to appear and make their defence, which they ought to have had, according to the true intent and meaning of the aforementioned act, such person or persons so prejudiced, as aforesaid, shall in no ways be concluded by any such award, decree, or determination whatsoever, but are hereby declared to be restored, and to stand upon the same foot as to any of the lands wherein they were interested (and awarded to others as aforesaid) as if such award, decree, or determination, or any other proceedings thereupon, had never been made; any thing in the aforementioned act, to the contrary notwithstanding.

And to prevent the great delays and disturbances that have been given commissioners in land affairs, by admitting attornies and other loquatious and mercenary advocates to plead before them, for fees: *Be it likewise enacted*, That for the future no persons be admitted to plead as advocates before any such commissioners as aforesaid, unless they shall upon request of the said commissioners, or of either the parties, declare upon oath, That they have not received nor do expect or will receive any fee or reward whatsoever, for their assistance in such case.

And be it likewise enacted, That one act of assembly made at a session of assembly begun and held at the city of Annapolis the twenty-sixth day of April, anno domini, seventeen hundred and fifteen, entitled, "An act for ascertaining the

bounds of land within this province," and also the supplementary act thereto, be and are hereby repealed.

Passed the 10th of May, 1718, and recorded in liber L. L. No. 4, folio 410, &c. one of the law records of the late province, now state of Maryland, and belonging to the office of the court of appeals for the western shore.

TH: HARRIS, JUN.
Cl'k Ct. Apps. W. S.

Note.—This act is marked in Bacon's edition as dissented to. The following is his note under the title.

"By this act the acts of 1715, ch. 45, and 1717, ch. 9, are repealed: both would otherwise have expired on the 1st June, 1719: for the dissent see his lordships speech to both houses, communicated by the governor on the 19th July, 1721."

MARYLAND.—OCTOBER SESSION, 1720.

[Chapter 17.] *A supplementary act to the act for ascertaining the bounds of land within this province.*

Whereas several inconveniences have been complained of, this general assembly, in relation to abuses suffered by the too arbitrary power given to the commissioners by the said law; for prevention whereof and to supply some other defects therein, it is humbly prayed that it may be enacted.

And be it enacted, by the right honorable the lord proprietary, by and with the advice and consent of his lordship's governor, and the upper and lower houses of assembly, and the authority of the same, That three freeholders in each county within this province who are best skilled in the art of surveying, and best acquainted with the nature and design of ancient surveys, such as the governor and council for the time being shall think proper, shall be commissioned and empowered under the great seal, used in this province by the governor for the time being to review any tract or tracts of land, the bounds whereof have heretofore been ascertained by land commissioners, and judgment given thereon, or which hereafter shall be ascertained by the land commissioners of the first view for their respective counties, upon any appeal to them made by any complainant or defendant who shall find themselves aggrieved by such judgment, which said commissioners to be appointed, or any two of them shall have full power and authority to appoint, require and command such officers, evidences and assistants to attend them in the execution of their commission as are appointed to attend the commissioners on the first view by the before recited act, which said officers, evidences and assistants shall be under the same restrictions and penalties upon their non-attendance, and have

like fees and allowances with those who attend the land commissioners on the first view.

And to ascertain in what time appeals shall be made, *Be it enacted* by the authority aforesaid, by and with the advice and consent aforesaid, That any complainant or complainants, defendant or defendants that are allowed an appeal by this act, shall enter their appeal within one hundred and fifty days after the end of this present sessions of assembly, or within one hundred and fifty days after such judgment, order, or decree hereafter to be made or given.

And be it further enacted by the authority aforesaid, by and with the advice and consent aforesaid, That the said commissioners of review, or any two of them, after application to them made by any complainant or complainants, defendant or defendants as aforesaid, shall appoint a certain time, not exceeding sixty days after such application, to go upon the land or lands in dispute, and having given due notice thereof to the contending parties to appear and make good their several allegations, shall then and there proceed with all convenient speed to review the bounds of the land so ascertained, and upon mature consideration of the allegations of the parties, examination of evidences and running the lines of the said lands or any other adjacent lands for their better information, reverse or confirm the judgment, order and decree of the land commissioners aforesaid, and give such judgment therein as the case shall require.

And be it further enacted by the authority aforesaid, by and with the advice and consent aforesaid, That it shall and may be lawful for the commissioners of review, upon confirming any judgment of the land commissioners to assess the costs and award execution for the same against the appellant, but upon a reversal of such judgment as aforesaid, that it shall and may be lawful for the said commissioners of review to mark or cause to be marked, such other boundaries to the land or lands in dispute as to them shall seem meet, and cause three fair plots and certificates thereof to be made by the surveyor, one for each of the contending parties, and the other to be entered in a sufficient book to be procured at the charge of the respective counties, for that purpose, and lodged among the records thereof, and to assess not only all such costs and damages as may have accrued upon the review, but also all costs and damages which the appellant expended or suffered by the judgment, order, or decree of the land commissioners as aforesaid, and order execution thereon against the defendant.

And be it enacted, by the authority aforesaid by and with the advice and consent aforesaid, That upon any such reversal and ascertaining the bounds of any land as aforesaid, it

shall and may be lawful for the commissioners of review to put the appellant or appellants in to quiet possession of the lands and tenements contained within the said bounds, with a saving to all persons who may have a better right to all or any part of the said land, whether by superiority of title, or priority of survey, which also shall be a rule to the land commissioners of the first view, any thing in this or the former act to the contrary notwithstanding.

And be it enacted, by the authority, advice and consent aforesaid, That the judgment, order and decree of any commissioners of review, as aforesaid, shall be final, saving to all persons their right of appeal to England, in such cases and in such manner as the laws of Great-Britain and this province allow of.

And be it further enacted, by the authority aforesaid, by and with the advice and consent aforesaid, That in case any of the commissioners of review should be related to any of the contending parties, or be any ways interested in the lands in dispute before them, or should die, or should have been a judge before on the determination of the bounds of any such lands, then in such cases it shall and may be lawful for the commissioner or commissioners not related or interested or surviving, or having been a judge before as aforesaid to call to his or their assistance one or two, (as the case shall require,) freeholders of the same county, such as he or they shall approve of, not being any ways related or interested as aforesaid, who shall be thereby impowered (on qualifying him or themselves by taking the oaths by this act directed,) together with such commissioner or commissioners to review the said land or lands and proceed to the determination of the bounds thereof, and other requisites in all and every respect, as fully and amply to all intents and purposes as the said commissioners, had they not been related, interested or dead, as aforesaid, could or might have done, and the like method to be used where a choice is made of the land commissioners upon the first view by the contending parties.

And forasmuch as it may sometimes happen upon the exterior bounds of counties, that some of the lines of lands in dispute may run into the next adjacent county, or that it may be necessary to run the lines of some lands lying in such county, in order to find the true bounds of the land in controversy, in all such cases it shall and may be lawful for the commissioners of review, or land commissioners, to cause such lines to be run out and to settle the bounds of land in dispute, notwithstanding some of the boundaries may be in such adjacent county.

And be it further enacted, by the authority aforesaid, by and with the advice and consent aforesaid, That the commission-

ers of review, or any one of them, shall meet at their respective county court houses the second day of every court, and there set as a court to receive appeals from the judgment of the land commissioners, and shall cause their clerk, (to be by them appointed) to enter such appeal, together with the time appointed for their meeting on such land.

And be it further enacted, That such commissioners of review for their attendance on the determination of such appeals, shall be allowed the sum of one hundred pounds of tobacco per day to each commissioner, as is allowed by the former law to the commissioners of the first view, and no more; and that any of the land commissioners of review as aforesaid, or any of the commissioners made choice of or appointed upon the first view, after having qualified themselves according to this and the former law, who shall refuse or neglect to attend at the time and place appointed for such view or review, not having a reasonable excuse, shall be fined the sum of five hundred pounds of tobacco, to be recovered in the right honorable the lord proprietor's name in any county court within this province, by action of debt, bill, plaint or information, and applied towards the support of public schools, in such county where such commissioner or commissioners shall reside.

And be it further enacted, by the authority, advice and consent aforesaid, That the commissioners of review appointed by this act shall qualify themselves by taking the several oaths appointed by law, and also make the declaration commonly called the test, and subscribe the same, and the oath of abjuration, and also take the following oath, viz. "I, A. B. "do swear that I will justly and truly execute the powers and "authorities to me given by the acts of assembly, for ascer- "taining the bounds of land within this province, according "to the best of my skill, knowledge and understanding, "without fear, favour, or affection. So help me God." Which said commissioners shall have recourse to a certain clause in the aforesaid act of assembly for ascertaining the bounds of land within this province, prohibiting loquacious advocates to plead before them, and are by this act obliged to conform strictly to the said clause in every matter and thing therein contained.

Provided, nevertheless, that in case any person or persons now under execution, or that shall hereafter be taken in execution for any costs or damages awarded by the commissioners of the first view, and shall be desirous to appeal to the commissioners to be appointed by this act, that it shall and may be lawful for the sheriff, in whose custody such person or persons shall be, and he is hereby obliged to discharge such person or persons immediately out of execution, upon their

giving good security for payment of all such costs and damages for which they are or shall be in execution, in case they do not enter and prosecute their appeal according to the directions of this act, or that it shall not be otherwise decreed by the commissioners of review.

And, for the better understanding what person or persons shall be accounted of kindred to the parties, plaintiffs or defendants, making application to the first commissioners, or commissioners of review, and for direction to the said commissioners therein; *Be it enacted* by the uthority aforesaid, That in all such cases the commissioners appointed on any view or review aforesaid, shall have recourse to the table of marriages as a directory therefore.

Passed the twenty-seventh of October 1720, and recorded in liber L. L. No. 4, folio 494, &c. one of the law records of the late province, now state of Maryland, belonging to the office of the court of appeals for the Western shore.

TH: HARRIS, JUN.
Clerk Ct. Apps. W. S.

Note.—This act is also stated to have been dissented to by the proprietary; See his speech before mentioned.

AN ACT FOR QUIETING POSSESSIONS.

N. B. This act is confirmed among the perpetual laws, by 1676, *ch.* 2, *and is also approved and quoted in the act of* 1715, *ch.* 47, *and all property obtained under it is confirmed*, §. 1, 2.

FORASMUCH as in the beginning of this plantation, and till of late years, there never was any settled course of conveying lands, tenements or hereditaments, from man to man, in this province, by reason whereof the titles of divers persons, who have, *bona fide*, bought and paid for lands, become doubtful: And thence arise divers suits at law, to the great loss of divers inhabitants of this province, We, the delegates and deputies of the freemen of this province, in this present general assembly, do pray that it may be enacted,

II. *And be it enacted* by the right honourable the lord and proprietary of this province, by and with the advice and consent of the upper and lower houses of this present general assembly, That all sales, gifts or grants heretofore made, of any lands, tenements or hereditaments, within this province, by any person or persons whatsoever, that right had to sell, give or grant such lands, tenements or hereditaments, made

by writing only, with or without seal, shall for ever hereafter be accounted good, and available in law, to bar the heirs or executors of such vendors, donors or grantors; and all persons claiming dower from any such vendors, donors or grantors; any error in the form only, of such writings, to the contrary notwithstanding.

III. *And forasmuch* as divers assignments of patents (written on the back side of such patents) for land, are now worn out, and also many other sales in paper, either worn out, or quite lost, for which the purchase money hath been *bona fide* paid, *Be it further enacted* by the authority, advice and consent aforesaid, That all sales, gifts or grants heretofore made, by persons that right had, as aforesaid, where either the sale, gift or grant, or payment, *bona fide* made, can be proved by witness, such sales shall for ever hereafter be accounted good, and available in the law, to bar the heirs and executors of such vendors, donors or grantors, or other persons claiming dower from any such vendors, donors or grantors; any law, custom or usage to the contrary hereof notwithstanding.

Examined and compared with the record,

REVERDY GHISELIN,
THOMAS BACON.

Passed ninteenth April 1671: recorded in liber W. H. and L. folio 53; office of the court of appeals for the Western shore:—taken here from Bacon's edition.

AN ACT FOR THE ENROLLING OF CONVEYANCES, AND SECURING THE ESTATES OF PURCHASERS.

This act is confirmed by 1676, *ch.* 2, *and is also approved, and all the purchases made under it, are confirmed by the act of* 1715, *ch.* 47, §. 4.

FOR the better establishing of a way and method of conveying of manors, lands, tenements and hereditaments, within this province, for the future; and for the advoiding of all abuses and deceit, in incumbering estates by mortgages, and otherwise, by the owners of lands and hereditaments, to the prejudice of purchasers, for valuable considerations, and such as lend their monies upon real securities:

II. *Be it enacted* by his lordship the lord proprietary of this province, by and with the advice and consent of the upper and lower houses of this present general assembly, That from and after the publication hereof, no manors, lordships, lands, tenements or hereditaments whatsoever, within

this province, or any the lands, islands, territories or places thereunto belonging, shall pass, alter or change from one to another, whereby the estate of inheritance, or freehold, or any estate for years (other than such upon which the improved yearly rents reserved to be paid) shall be made to take effect in any person or persons, or any use or trust thereof, except the deed or deeds, conveyance or conveyances, by which the same shall be intended to pass, alter or change, be made by writing indented and sealed; and that the same be acknowledged in the provincial court of this province, or before two of the privy council of this province, or in the court of the same county, or before two of the justices of the peace of the same county, where the same manors, lordships, lands, tenements and hereditaments do lie; and be enrolled, or the substance of the same *(that is to say)* the certain dates, names, surnames, and additions of the parties thereunto, with the certain considerations for which the same are made, and the certainty of the premises, and of the estate and estates thereby intended to pass, be enrolled in the provincial court of this province, or in the county court where the land doth lie: The same enrolment to be made within twelve months, next after the date of the said writings indented; for the caption of which said acknowledgment, there shall be paid to the parties taking the same, twelve pence sterling, and no more. And for which said enrolment, there shall be paid to the clerk of the said provincial or county court, in case the same do not exceed half a side of a leaf in folio, in the record book, wherein the same shall be enrolled, the sum of eight pence only; and if the same do exceed half a side of a leaf as aforesaid, then the sum of sixteen pence; and so after the rate of sixteen pence of every side of a leaf which the enrolment shall take up. And that the said clerk of the said court, shall well and sufficiently enrol the same, with a note of the day wherein the same shall be enrolled, in a good sufficient book in folio, to remain in the custody of the clerk of the same court, for the time being, amongst the records of the said court; to the intent that every party that hath to do therewith, may resort unto and see the enrolment. And that the same clerk shall, on the back of every such deed, in a full legible text hand, make an endorsement of the day and year of such enrolment, and also of the folio of the book in which the same is enrolled, and shall unto such endorsement set his hand.

III. *Provided always, and it is hereby enacted* by the authority aforesaid, and by the advice and consent aforesaid, That where the grantor or grantors, bargainor or bargainors, of any such manors, lordships, lands, tenements or hereditaments, shall happen to be out of this province, and within any

of the dominions of his majesty the king of *England*, at the time of the ensealing of such writing or writings indented, so that the same cannot be acknowledged in manner and form as is before directed, or enrolled within the time for that purpose herein before limited; that, in every such case, the acknowledgment of such writing or writings, before the chief governor or governors, of any of his said majesty's plantations, or before the mayor, or chief magistrate of any city, or town-corporate, within his said majesty's dominions, and a certificate thereof under the hand and seal of such chief governor or governors, or under the common seal of such city, or town-corporate, annexed and affixed unto such writing indented, the enrolment of such writing, together with such certificate, in the provincial court before mentioned, within two years next after the date of the said writing indented, shall be a sufficient acknowledgment and enrolment in the law, to all intents and purposes, and as effectual and available for the passing and conveying of the manors, lordships, lands, tenements and hereditaments thereby intended to be passed or conveyed, as if the same had been acknowledged in this province, and enrolled according to the intent and directions of this act; any thing herein before contained to the contrary hereof notwithstanding.

IV. *And be it further enacted* by the authority aforesaid, by and with the advice and consent aforesaid, That every such writing indented, to be acknowledged and enrolled as aforesaid, shall have relation, as to the passing and conveying of the premises, and the estate and estates thereby intended to be passed and conveyed, only from the day of the enrolment of the same, and not from the day of the date thereof: And shall, at all times be construed and taken most favourably and beneficially for the benefit and advantage of the grantee and grantees, and more strongly for the barring of the grantor or grantors therein to be named; and according to such intent as by the words thereof, shall appear to have been the true intendment of the parties thereunto, albeit the same shall not happen to be drawn and penned in such strict formal manner as is used in *England*, and in other countries, where the advice of council, learned in the laws of the country, may be easily had, in the drawing and penning of instruments of the like nature.

V. *Provided always*, That where any married woman, or *femme covert* shall happen to be named a party, grantor in any such writing indented, the same shall not be of force to debar her, or her heirs, except (upon her acknowledgment of the same) the person or persons taking such her acknowledgment, shall examine her privately and secretly, out of the hearing of her husband, "Whether she do make such ac-

"knowledgment willingly and freely, and without being in-
"duced thereunto, by any force or threats used by her hus-
"band, or through fear of his displeasure?" And that, upon such examination, she shall own the said acknowledgment to be free and voluntary. And that the person or persons so examining her, shall, in the note or certificate of the caption of the said acknowledgment, certify such her examination and acknowledgment thereupon. And that such certificate be likewise enrolled upon record. In which case only every such *femme covert* shall be barred, and not otherwise; any thing herein before contained to the contrary notwithstanding.

VI. *Provided also*, That no such writing indented, shall be at any time enrolled within this province, before the receiver general of the lord proprietary of this province for the time being, or the deputy or deputies of such receiver-general for the time being, shall set his or their *recepimus* thereunto, if any fine for alienation for the said land be due, and by the original grant reserved; any thing to the contrary hereof, in this act, notwithstanding.

VII. *And be it further enacted*, That all laws *for enrolment of conveyances, and securing the estate of purchasers*, heretofore made, be hereby repealed.

Examined and compared with the record.

REVERDY GHISELIN,
THOMAS BACON.

Passed sixth June 1674; recorded in liber W. H. and L. folio 76: office of the court of appeals for the Western shore; taken here from Bacon's edition.

AN ACT FOR QUIETING POSSESSIONS, ENROLLING CONVEYANCES, AND SECURING THE ESTATES OF PURCHASERS.

Supplementary and other acts 1725, *ch.* 8, 1752, *ch.* 8, *November*, 1766, *ch.* 14, *June* 1771, *(expired) November*, 1773, *ch.* 3, *November*, 1779, *ch.* 10, *November*, 1782, *ch.* 23, 1785, *ch.* 9, *ch.* 66, *ch.* 72, 1791, *ch.* 45, 1794, *ch.* 57, 1796, *ch.* 43, 1797, *ch.* 103, 1798, *ch.* 103.

Forasmuch as a good and beneficial law, entitled, An act for quieting of possessions, was made the twenty-seventh day of March *anno domini* one thousand six hunderd seventy-one, in this province, which by the use thereof hath been found very much conducing to the benefit of the said province,

II. *Be it therefore enacted*, by the king's most excellent majesty, by and with the advice and consent of his majesty's governor, council and assembly of this province, and the authority of the same, That all sales, gifts and grants, at any time before the thirteenth day of April, one thousand six hundred seventy-four, (and not after,) of any lands, tenements or hereditaments, within this province, by any person or persons whatsoever that had right to sell, give or grant such lands, tenements or hereditaments, made by writing only, with or without seal, shall for ever hereafter be accounted good and available in law to bar the heirs of such vendors, donors or grantors, any error in the form only of such writing to the contrary notwithstanding.

III. *And*, forasmuch as divers assignments of patents, written on the backside of such patent for land, are now worn out, and also other sales in paper either worn out or quite lost, for which the purchase money hath been *bona fide* paid, *Be it further enacted*, by the authority, advice and consent aforesaid, That all sales, gifts or grants, at any time before the said thirteenth day of April, one thousand six hundred seventy-four, made by persons that right had as aforesaid, if either the sale, gift, grant or payment, *bona fide*, can be proved by witnesses, such sale, gift or grant, shall forever hereafter be accounted good and available in law to bar the heirs of such vendors, donors or grantors, or any person claiming dower from such vendor, donor or grantor, any law, usage or custom to the contrary thereof notwithstanding.

IV. *And be it further enacted*, by the authority, advice and consent aforesaid, That all sales and grants of any lands tenements and hereditaments, made by deed indented and enrolled since the said thirteenth day of April, one thousand six hundred seventy-four, or that hereafter shall be so made and enrolled, shall be good and available in law, without livery of seizen.

V. *And*, whereas in the year of our Lord one thousand six hundred seventy-four, and in the forty-second year of the dominion of the right honourable Cecilius, lord baron of Baltimore, a very good law was made, whereby it was enacted by his said lordship, by and with the advice and consent of the upper and lower houses of the then general assembly, that no manors, lordships, lands, tenements and hereditaments whatsoever within this province, should alter, pass or change from one to another, (as by the said act relation being thereunto had more at large doth appear,) except the same were acknowledged and enrolled as in the said law is directed ; *Be it therefore hereby declared and enacted*, by the authority, advice and consent aforesaid, That whatsoever deed or deeds, conveyance or conveyances during the continuance of the said law,

were enrolled by virtue of the said law within the time therein limitted, are and shall be taken and adjudged to be effectual in law, according to the purport, intent and meaning of such deed or deeds, conveyance or conveyances, enrolled; and if any deed or deeds, conveyance or conveyances, made during the continuance of that act, were sealed and delivered, but not enrolled according to the intent of the said law, *It is hereby enacted and declared*, That nothing has passed by such deed or deeds, conveyance or conveyances, not enrolled as aforesaid, the repeal of the said law notwithstanding.

VI. And, whereas at an assembly held at the city of St. Mary's on the tenth day of May, Anno Domini, one thousand six hundred ninety two, in the fourth year of the reign of our late sovereign lord and lady, king William and queen Mary, of blessed memory, an act for enrolment of conveyances, and securing the estates of purchasers, was then made, whereby it was enacted, that no manors, lands, tenements or hereditaments whatsoever, within this province, shall pass, alter or change from one to another, whereby the estate of inheritance or free-hold, &c. shall take effect, &c. as by the said law (relation being thereunto had) more at large doth appear, except the deed or deeds, conveyance or conveyances, by which the same were intended to pass, alter or change, from one to another, were acknowledged and enrolled, as the law directs; BE IT HEREBY ENACTED AND DECLARED, *by the authority, advice and consent aforesaid*, That whatsoever deed or deeds, conveyance or conveyances, during the continuance of the said last mentioned act, were enrolled by virtue thereof within the time therein limitted, are and shall be taken and adjudged to be effectual in law, according to the purport, intent and meaning of such deed or deeds, conveyance or conveyances, enrolled; and if any deed or deeds, conveyance or conveyances, made during the continuance of that act, were sealed and delivered, but not enrolled according to the intent of the said law, IT IS HEREBY ENACTED AND DECLARED, That nothing has passed by such deed or deeds, conveyance or conveyances, not enrolled as aforesaid, the repeal of the said act notwithstanding.

VII. And, whereas at a session of assembly, begun and held at the port of Annapolis the twenty-seventh day of June, and ended the twenty-second day of July, in the eleventh year of the reign of our late sovereign lord king William the third, *anno domini* one thousand six hundred ninety-nine, An act for enrolling of conveyances, and securing the estates of purchasers, was made, whereby, for the better establishing a way and method of conveying of manors, lands, tenements and hereditaments, and for avoiding the abuses and deceits by mortgages, it was enacted by the king's most excellent

majesty, by and with the advice and consent of the same assembly, and the authority of the same, that no manors, lands, tenements or hereditaments whatsoever, within this province, should pass, alter or change, from one to another, whereby the estate of inheritance or free-hold, or any estate for above seven years, should be made to take effect, &c. as by the said act, relation being thereunto had more at large doth appear, except the deed or deeds, conveyance or conveyances, by which the same could be intended to pass, &c. were acknowledged and enrolled, as the law directs; BE IT HEREBY ENACTED AND DECLARED, That whatsoever deed or deeds, conveyance or conveyances, made during the continuance of the said law, were enrolled by virtue of the said law within the time therein limited, are and shall be taken and adjudged to be effectual in law, according to the purport, intent and meaning of such deed or deeds, conveyance or conveyances, enrolled; and if any deed or deeds, conveyance or conveyances, made during the continuance of that act, were sealed and delivered, but not enrolled according to the intent of the said law, IT IS HEREBY ENACTED AND DECLARED, That nothing hath passed by such deed or deeds, conveyance or conveyances, not enrolled as aforesaid, the repeal of the said act notwithstanding.

VIII. And, for the better ascertaining a way and method for conveying of manors, lands, tenements and hereditaments for the future, and for the avoiding abuses and deceits by mortgages, BE IT ENACTED, *by the king's most excellent majesty, by and with the advice and consent aforesaid*, That from and after the publication hereof no manors, lands, tenements or hereditaments whatsoever, within this province, shall pass, alter or change, from one to another, whereby the estate of inheritance or freehold, or any estate for above seven years, shall be made or take effect in any person or persons, or any use thereof to be made, by reason of any bargain and sale only, except the deed or conveyance by which the same shall be intended to pass, alter or change the same, be made by writing *indented* (*a*) and sealed, and the same to be (*b*) acknowledged in the provincial court, or before one justice thereof, or in the county court, or before two justices of the same, where such manors, lands, tenements or hereditaments do lie, and enrolled within six months (*c*) after the date of such writing indented as aforesaid; and for the taking of such acknowledgment there shall be paid to the party or parties taking the same one shilling, and no more; and the clerk shall immediately, upon the receipt of such deed, endorse the time of his receiving the same on the back thereof, and shall well and truly enrol such deed or conveyance in a good sufficient book in folio, to be regularly alphabeted in the names of both parties, and to remain in the custody of the clerk of the same court for

the time being, among the records of the same court, and that the same clerk shall, on the back of every such deed, in a full legible hand, make an endorsement of such enrolment, and also of the folio of the book in which the same shall be enrolled, and shall to such endorsement set his hand.

(*a*) By 1794, ch. 57, indenting is declared not necessary to the validity of deeds thereafter to be made.

(*b*) By 1725, ch. 8, probats of deeds, &c. either in the mayor's court, or before two magistrates of the City of Annapolis, and all deeds of lands lying within the precincts of that city, and acknowledged, &c. shall be good in law, as if made and acknowledged before a provincial justice, &c.

(*c*) By November, 1779, ch. 10, they are to be calendar months.

IX. And provided always, and be it further enacted, *by the authority aforesaid*, That when the grantor or grantors, bargainer or bargainers of such lands, tenements or hereditaments, shall live remote from either the provincial court, or county court where the land lieth, it shall and may be lawful for such grantor or bargainer to acknowledge the same in the county where such bargainers live, and a certificate of such acknowledgement, under the hand of the county clerk, and under the seal of the same county, of such acknowledgement, shall be taken, deemed, reputed, and be as good and valid, as if the same had been acknowledged either in the provincial or county court where such land lieth, and be a sufficient warrant for such county clerk, where the land lieth, to enrol the same; and if any such grantor or bargainer of any lands or tenements as aforesaid, shall happen to be out of this province, within any of his majesty's dominions, at the time of the ensealing such writing or writings indented, so as the same cannot be acknowledged, as is before directed, or enrolled within the time for that purpose herein before limitted, that in every such case such lands or tenements as aforesaid shall be acknowledged by a letter of attorney, well and sufficiently proved, either in the provincial or county court where such lands or tenements lie, or before one justice of the provincial court, or two justices of the county court as aforesaid, and be enrolled as aforesaid, any thing herein before contained to the contrary thereof notwithstanding.

The act of November, 1766, ch. 14, (reciting that this act extends to conveyances by bargain and sale only,) prescribes a mode (substantially the same) for the acknowledgment, &c. of every conveyance by which "any estate of inheritance or freehold, or any declaration or limitation of use, or any estate for above seven years," shall pass or take effect.

X. And be it further enacted *by the authority aforesaid*, That every such writing indented, to be acknowledged and enrolled as aforesaid, shall have relation, as to the passing and conveying of the premises, and the estate and estates thereby passed, or intended to be passed and conveyed, by and from the day of the enrolment of the same, and not from the

day of the date thereof; (*a*) and shall at all times be construed and taken more favourably and beneficially for the benefit and advantage of the grantee or grantees, and more strongly for the barring the grantors therein to be named, and according to such intents, as by the words thereof shall appear to have been the true intent of the parties thereunto, although the same be not so firmly drawn as is used in England, where the advice of counsel learned in the law may be easily had.

(*a*) By November, 1766, ch. 14, section 5, such writings, deeds, &c. thereafter to be made, shall have relation as to conveying the premises, &c to the day of the date.

XI. PROVIDED ALWAYS, That if any *feme-covert* be named as a grantor in any such writing indented, the same shall not be in force to debar her or her heirs, except upon her acknowledgment of the same, and the person or persons taking such her acknowledgment, shall examine her privately, out of the hearing of her husband, "whether she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by, her husband, or fear of his displeasure?" And that the person or persons so examining her shall, (in a note or certificate of the taking of the said acknowledgment,) certify her examination and acknowledgment thereupon, and that such certificate be likewise enrolled upon record; in which case, and by such acknowledgments and certificates, *feme-coverts* shall be barred, and not otherwise, and shall also be barred of their dower by such like acknowledgment, where they have only a right of dower in the estate conveyed, although not named in the deed thereof, any thing herein contained to the contrary notwithstanding.

By 1752, ch. 8, the acknowledgment and examination of any *feme-covert* who resides out of the province, taken before the mayor of any corporation in Great-Britain or Ireland, or before one justice of the supreme court of any province or colony within his majesty's dominions, and certified by endorsement upon such deed, under the hand of such magistrate, and seal of the corporation or colony respectively, shall be good in law to bar such *feme-covert* of her right of inheritance or dower, as the case may be.

XII. PROVIDED ALWAYS, AND BE IT FURTHER ENACTED, *by the authority aforesaid, by and with the advice and consent aforesaid*, That where any acknowledgement or acknowledgments of any deed or deeds, conveyance or conveyances, by them that right had to grant, bargain and sell any manors, lands, tenements or hereditaments within this province, have been made during the continuance of any the former recited acts of assembly before one justice of the provincial court, or before one or two of the council, and enrolled according to the direction of the former acts, shall be good and effectual in the law, to all intents, constructions and purposes whatsoever, any thing in this act contained to the contrary thereof in any wise notwithstanding.

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13		in note, after *according* insert *to*
20	31	for *continued* read *contrived*
41	33	for *do* read *doth*
71	5	for *souther* read *southern*
82	19	for *and* read *in*
93	15	for *demense* read *demesne*
112	6	for *our* read *or*
119	14	for *either* read *other*
168	42	before *was* insert *which*
188	30	dele *a*
		in note after *speaking* insert *of*
203	35	after *to* insert *tr t*
211	30	before *day* insert *this*
215	29	after *could* insert *not*
223	10	for *lief* read *relief*
229	11	for *accessary* read *necessary*
232	19	for *gent* read *agent*
233	42	after *are* insert *not*
245	43	for *or* read *on*
248	29	for *seal* read *scale*
253	16	for *an* read *and*
281	32	for *the* read *there*
289	6	for *revenues* read *reserves*
295	9	for *enjoined* read *enjoyed*
300	8	for *5th* read *51st*
305	2	for *vancant* read *vacant*
319	20	for *with* read *within*
327	16	before *land* insert *improvements contained in the*
329	32	dele *for*
	34	dele *if*
334	3	for *seizing* read *seizin*
341	20---21	for *inconsiderably* read *inconsiderable*
360	33	for *even* read *ever*
	44	for 1801 read 1781
356	47	for *avowed* read *avoid*
367	20	for *or* read *on*
368	18	after *only* insert *by*
369	4	for *powers* read *power*
	17	for 1801 read 1781
382	23	for *plates* read *plats*
390	36	for *along* read *a long*
APPENDIX.		
vi	28	dele *and*
	43	insert *it*
xx	34	for *commissioner* read *commission*
xxi	31	for *Malnemara* read *Macnemara*.

N. B. The reader is to bear in mind that the numerous singularities and faults in orthography, &c. which appear in the *documents* are not errors either of the editor or of the press; but, so far as they may be deemed mistakes, are chargeable upon the records, which it has been thought proper, in a general way, to follow literally.